

**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-T
Date: 18 October 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: 18 October 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
OF GH-056 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-056 Pursuant to Rule 92 *ter*”, filed confidentially with a confidential annex on 5 October 2012 (“Motion”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-056 pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), arguing that the evidence is relevant and probative to the charges in this case and meets the requirements for admission under this Rule.¹ The Prosecution submits that admitting GH-056’s statement, which condenses into one document the relevant and non-repetitive portions of his previous testimony and witness statements, will enable it to present its case-in-chief in an efficient and expeditious manner, without compromising the fairness of the proceedings.² The Prosecution requests half an hour to conduct the examination-in-chief of the witness via video-conference link.³ In accordance with the protective measures in force for GH-056, the Prosecution requests that the 92 *ter* statement be admitted under seal.⁴ The Prosecution further requests the admission of eight associated exhibits, four of which under seal, that, in its view, form an integral and inseparable part of GH-056’s tendered Rule 92 *ter* statement.⁵

3. The Defence has no submissions on the Motion.⁶

B. Applicable Law

4. The main objective of Rule 92 *ter*—entitled “Other Admission of Written Statements and Transcripts”—is to ensure an effective and expeditious trial, while simultaneously ensuring and respecting the rights of the accused, and the jurisprudence of the Tribunal has applied the rule as permitting, by necessary inference,⁷ the admission of exhibits where they accompany written

¹ Motion, paras 1, 4-6.

² Motion, paras 1, 5.

³ Motion, paras 4, 10.

⁴ Motion, para. 9.

⁵ Motion, paras 1, 8-10, annex A, p. 3.

⁶ Email from Defence to Trial Chamber, 15 October 2012.

⁷ *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.

statements or transcripts and form an “inseparable and indispensable” part of the evidence.⁸ In order to satisfy this requirement, the document must be one without which the witness’s testimony would become incomprehensible or of lesser probative value.⁹ Moreover, the evidence sought to be admitted, 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.¹⁰

C. Discussion

5. GH-056’s proposed Rule 92 *ter* statement contains information about (a) activities of members of the joint criminal enterprise alleged in this case; (b) the arming of local Serbs in the village of Dalj; (c) movement restrictions imposed on non-Serbs in the areas of Klisa, Dalj, and Erdut; (d) the arrest of seven non-Serb men at the Filip Grujić farm; (e) the arrest, interrogation, and detention of GH-056 at the Erdut Training Centre; (f) the witness’s encounters with Milorad Stričević and Arkan; and (g) the forced transfer of the witness’s home and property to the Croatian Serb government before he fled the region. The eight tendered associated exhibits are discussed in the Rule 92 *ter* statement. 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*.

6. The Trial Chamber notes that the Prosecution has indicated in the annex that the tendered associated exhibit designated as Rule 65 *ter* number 03898 does not need to be under seal. However, a review of the document indicates that it is a witness statement which includes the name of the witness.

⁸ *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.

⁹ *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 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.

¹⁰ *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

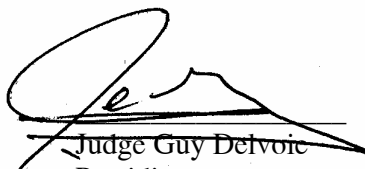
D. Disposition

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

- (a) **DECIDES** that the evidence of GH-056 is appropriate for admission into evidence; and
- (b) **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 eighteenth day of October 2012,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]