

**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-003 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-003 Pursuant to Rule 92 *ter*”, filed confidentially with a confidential annex on 1 October 2012 (“Motion”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-003 pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), arguing that the evidence is probative, relevant, and reliable and meets the requirements for admission under that Rule.¹ The Prosecution submits 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.² In accordance with the protective measures in effect for GH-003, the Prosecution requests that the Rule 92 *ter* statement be admitted under seal.³ The Prosecution further requests the admission of 17 associated exhibits that, in its view, form an integral and inseparable part of GH-003’s tendered Rule 92 *ter* statement.⁴ The Prosecution requests that 12 of these associated exhibits be admitted under seal.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 statements or transcripts and form an “inseparable and indispensable” part of the evidence.⁸ In order

¹ Motion, paras 1, 6-8.

² Motion, paras 1, 4-5, 9.

³ Motion, para. 11.

⁴ Motion, paras 1, 10-12.

⁵ Motion, para. 11; confidential Annex A.

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.

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

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-003's proposed Rule 92 *ter* statement contains information about the alleged takeover of Dalj by the Yugoslav People's Army and "local Territorial Defence forces", the alleged arming of Serbs in Dalj, the activities of military and paramilitary formations including the destruction of the Dalj police station, and alleged crimes committed by alleged members of the alleged JCE in the Dalj police buildings, all during the relevant Indictment period. The tendered exhibits are discussed in the Rule 92 *ter* statement. The Trial Chamber finds that the tendered statement and associated exhibits are relevant, have probative value, and are appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

D. Disposition

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

(a) **DECIDES** that the evidence of GH-003 is appropriate for admission into evidence; and

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.

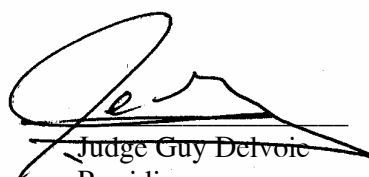
⁹ *Stanišić and Župljanin* Decision, para. 18; *Lukić and Lukić* Decision, para. 15; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Prosecution's Motion for the Admission of Written Evidence of Witness Slobodan Lazarević Pursuant to Rule 92 *ter* with Confidential Annex, 16 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.

- (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]