

**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: 23 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: 23 October 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
OF GH-058 AND GH-062 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 Pursuant to Rule 92 *ter* (GH-058 and GH-062)”, filed confidentially with a confidential annex on 3 October 2012 (“Motion”). The Defence confidentially filed its “Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-058 and GH-062)” on 17 October 2012 (“Response”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of evidence of GH-058 and GH-062 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 The Prosecution requests that the evidence of GH-058 and GH-062 be admitted under seal in accordance with the witnesses’ respective protective measures.³

3. In respect of GH-058, the Defence submits that the witness offers testimony concerning matters important to the case, including Hadžić’s relationship with a certain individual.⁴ The Defence submits that the witness offers contradictory references concerning this individual’s relationship with Hadžić, which casts doubt on the reliability of the witness statement.⁵ The Defence submits that hearing the witness’s evidence via video-conference link exacerbates the prejudice arising from the witness’s contradictory testimony.⁶ The Defence therefore opposes the admission of GH-058’s testimony by way of Rule 92 *ter*.⁷

4. In respect of GH-062, the Defence opposes the witness statement when tendered in conjunction with video-conference link testimony, arguing that the video-conference link reduces the amount of time for cross-examination and diminishes the Chamber’s opportunity to observe the witness.⁸

¹ Motion, paras 1, 3-4, 9.

² Motion, paras 1, 5-6, 10-11.

³ Motion, paras 7, 10.

⁴ Response, para. 2.

⁵ Response, para. 2.

⁶ Response, para. 3.

⁷ Response, paras 1, 3.

⁸ Response, para. 4.

B. Applicable Law

5. 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. The jurisprudence of the Tribunal has applied the Rule as permitting, by necessary inference,⁹ the admission of exhibits where they accompany written statements or transcripts and form an “inseparable and indispensable” part of the evidence.¹⁰ 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.¹¹ 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.¹²

C. Discussion

6. GH-058’s proposed Rule 92 *ter* statement contains information about (a) activities of Hadžić and alleged members of the alleged joint criminal enterprise (“JCE”) in this case; (b) the witness’s personal encounters with Hadžić and alleged members of the alleged JCE in Erdut; (c) the structure and activities of the government, military, and paramilitary groups in Erdut; (d) the alleged JNA destruction and takeover of Erdut; and (e) restrictions imposed on the movement of non-Serbs travelling from Erdut, all during the relevant Indictment period. In relation to the Defence’s argument that there are inconsistencies in the statement regarding a certain individual, the Trial Chamber finds that GH-058’s assertions pertaining to Hadžić and this individual are not necessarily inconsistent. In its 19 October 2012 Decision, the Trial Chamber denied the Prosecution’s request to hear the witness via video-conference link. Therefore, the Defence’s arguments pertaining to the prejudice it will suffer, should the witness give evidence via video-

⁹ *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.

¹⁰ *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.

¹¹ *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.

conference link, are moot. The Trial Chamber finds that the tendered statement is relevant, has probative value, and is appropriate for admission pursuant to Rule 89(C) and 92 *ter*.

7. GH-062's proposed Rule 92 *ter* statement contains information about (a) activities of alleged members of the alleged JCE in this case; (b) the alleged JNA shelling of the Vodovod resort centre where the Croatian National Guard was based; (c) the alleged JNA destruction and takeover of Erdut; (d) restrictions imposed on the movement of non-Serbs in Erdut; (e) the forced transfer of the property of the witness's family before the witness fled the region; and (f) the arrest, disappearance, and killing of the witness's family, all during the relevant Indictment period. The Trial Chamber considers that the possibility that the evidence of the witness may be heard via video-conference link has no bearing on the admissibility of the Rule 92 *ter* statement. Nor does the Chamber find convincing the Defence's argument that it will have less time to cross-examine the witness in the event that the witness's evidence is heard via video-conference link. The Trial Chamber finds that the tendered statement is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

D. Disposition

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


- (a) **DECIDES** that the evidence of GH-058 and GH-062 is appropriate for admission into evidence; and

¹² *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 witnesses appear to give evidence in these proceedings.

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

Done this twenty-third day of October 2012,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]