

**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: 7 November 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: 7 November 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
OF GH-091 AND GH-048 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-091)”, filed publicly with a confidential annex on 9 October 2012 (“First Motion”), and “Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-048)”, filed confidentially with a confidential annex on 12 October 2012 (“Second Motion”) (collectively referred to as “Motion”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-091 and GH-048, 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 relation to GH-048, the Prosecution requests the admission of a one-page supplemental statement tendered to clarify matters contained within the 1995 statement and five associated exhibits that, in its view, form an integral part of the tendered Rule 92 *ter* statement.³

3. The Defence indicated that it would make no submissions in relation to the Motion.⁴

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. The jurisprudence of the Tribunal has applied the Rule as permitting, by necessary inference,⁵ the admission of exhibits where they accompany written statements or transcripts and form an “inseparable and indispensable” part of the evidence.⁶ In order

¹ First Motion, paras 1, 3, 5; Second Motion, paras 1, 3, 5.

² First Motion, para. 1; Second Motion, para. 1.

³ Second Motion, paras 4, 8.

⁴ Email from Defence to Trial Chamber, 26 October 2012.

⁵ *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.

⁶ *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.⁷ 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.⁸

C. Discussion

5. GH-091's proposed Rule 92 *ter* statement contains information about (a) the alleged takeover of Erdut by the JNA on 1 August 1991; (b) the establishment of a new Erdut police force and training centre of the Territorial Defence; (c) the alleged mistreatment and/or disappearance of individuals brought to the Erdut training centre; and (d) the disappearance of non-Serbs.⁹ 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*.

6. GH-048's proposed Rule 92 *ter* statement contains information about (a) the alleged shelling of Lovas on 1 and 5 October 1991; (b) the alleged displacement and expulsion of non-Serbs from the town and surrounding villages; and (c) the alleged looting of Tovarnik and destruction of churches in Lovas and Tovarnik.¹⁰ The associated 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*.

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.

⁷ *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.

⁸ *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

⁹ First Motion, para. 5.

¹⁰ Second Motion, para. 5.

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-091 and GH-048 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 witnesses give evidence in these proceedings.

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

Done this seventh day of November 2012,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]