

**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: 27 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: 27 November 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
OF GH-128 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-128)”, filed publicly with a confidential annex on 7 November 2012 (“Motion”). The Defence confidentially filed its “Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-128)” on 21 November 2012 (“Response”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-128 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 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 further requests the admission of 36 associated exhibits that, in its view, form an integral and inseparable part of GH-128’s tendered Rule 92 *ter* statement.³

3. The Defence does not oppose the Motion except for the exhibit designated as Rule 65 *ter* number 05552.⁴ The Defence submits that, although this document was used during the witness’s testimony in the *Mrksić et al.* trial, it was neither tendered nor admitted.⁵

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,⁶ the admission of exhibits where they accompany written statements or transcripts and form an “inseparable and indispensable” part of the evidence.⁷ In order

¹ Motion, paras 1, 3-4.

² Motion, para. 1.

³ Motion, para. 8, confidential annex A.

⁴ Response, para. 1.

⁵ Response, para. 1.

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

to satisfy this requirement, the document must be one without which the witness's testimony would become incomprehensible or of lesser probative value.⁸ 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.⁹

C. Discussion

5. GH-128's proposed Rule 92 *ter* transcript contains information about (a) alleged attacks on the towns of Bapska, Šarengrad, Opatovac, Mohovo, Lovas, and Vukovar; (b) the alleged evacuation of Ilok and Vukovar inhabitants; (d) the pressure allegedly placed by the JNA on the civilians in Ilok; and (e) ECCM's efforts to evacuate people from Vukovar hospital.¹⁰ With respect to the one document challenged by the Defence, the Chamber notes that the information the witness recalled with the aid of this document is reflected in the transcript of his testimony and that the written evidence will not become incomprehensible or have lesser probative value without its admission. Therefore, the document does not form an integral and inseparable part of GH-128's tendered evidence. The Trial Chamber finds that the tendered transcript and remaining 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-128, with the exception of the document designated with Rule 65 *ter* number 05552, is appropriate for admission into evidence; and

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 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.

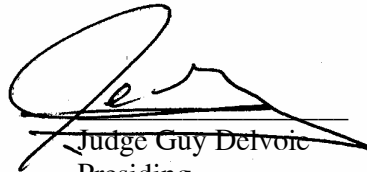
⁹ *Stanišić and Župljanin Decision*, para. 19; *Lukić and Lukić Decision*, para. 20; *Đorđević Decision*, para. 6; *Haraqija and Morina Decision*, para. 13.

¹⁰ Motion, paras 4-5.

- (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 gives evidence in these proceedings.

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

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



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]