

**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: 3 December 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: 3 December 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
OF GH-024 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-024)”, filed confidentially with a confidential annex on 13 November 2012 (“Motion”). The Defence confidentially filed its “Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-024)” on 27 November 2012 (“Response”). On 29 November 2012, the Prosecution confidentially filed its “Prosecution Request for Leave to Reply and Reply to Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-024)” (“Reply”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-024 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 In accordance with the protective measures in effect for GH-024, the Prosecution requests that the Rule 92 *ter* statement be admitted under seal.³ The Prosecution further requests the admission of 12 associated exhibits that, in its view, form an integral and inseparable part of GH-024’s tendered Rule 92 *ter* statement.⁴ The Prosecution requests that five of these associated exhibits be admitted under seal.⁵

3. The Defence submits that paragraphs 170 to 220 of GH-024’s statement describing events occurring after August 1994 are irrelevant to the Indictment.⁶ The Defence thereby opposes the admission of these paragraphs of GH-024’s statement and the five associated exhibits relating to those paragraphs.⁷

4. The Prosecution replies that it will not tender paragraphs 170 to 220 of the witness’s statement and their corresponding documents (Rule 65 *ter* numbers 02960, 05656, 05513, 05660, and 05665).⁸ However, the Prosecution expresses its position that not all the information therein is

¹ Motion, paras 1, 4, 6.

² Motion, para. 1.

³ Motion, para. 10.

⁴ Motion, paras 2, 9, 10.

⁵ Motion, para. 10; *see* Motion, confidential Annex A, p. 4.

⁶ Response, para. 1.

⁷ Response, paras 1-2 (Rule 65 *ter* numbers 02960, 05656, 05513, 05660, and 05665).

⁸ Reply, para. 2.

irrelevant and informs that Chamber and the Defence that it may seek to lead certain portions during the witness's oral testimony.⁹

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,¹⁰ the admission of exhibits where they accompany written statements or transcripts and form an “inseparable and indispensable” part of the evidence.¹¹ 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.¹² 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.¹³

C. Discussion

6. GH-024's proposed Rule 92 *ter* statement contains information about (a) alleged events in Dalj, Erdut, Borovo Selo, and Lovas as charged in the Indictment; (b) the alleged arming of Serbs in Dalj, Borovo Selo, and other villages; (c) the command structure and activities of military and paramilitary formations; (d) alleged crimes committed by members of the alleged joint criminal enterprise (“JCE”) and their subordinates; and (e) Hadžić's alleged interactions with members of the alleged JCE. The Trial Chamber notes that the Prosecution no longer wishes to tender, pursuant to Rule 92 *ter*, paragraphs 170 to 220 and the corresponding documents (Rule 65 *ter* numbers 02960, 05656, 00513, 05660, and 05665). The Trial Chamber finds that the remainder of the

⁹ Reply, para. 3.

¹⁰ *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.

¹¹ *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.

¹² *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.

statement and associated exhibits are relevant, have probative value, and are appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

7. In the event that the Prosecution seeks to lead evidence from the witness in relation to the information in paragraphs 170 to 220 of the statement or the corresponding documents (Rule 65 *ter* numbers 02960, 05656, 00513, 05660, and 05665), the Defence may object at the relevant time.

D. Disposition

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

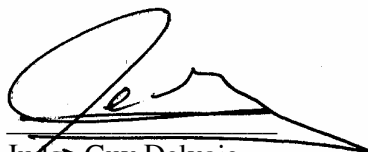
- (a) **DECIDES** that the evidence of GH-024—excluding paragraphs 170 to 220 of the statement and corresponding Rule 65 *ter* numbers 02960, 05656, 00513, 05660, and 05665—is appropriate for admission into evidence at this time;
- (b) **INFORMS** the parties that the Trial Chamber will make a final 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;
- (c) **ORDERS** the Prosecution to prepare and then tender the Rule 92 *ter* statement of the witness without paragraphs 170 to 220; and

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

- (d) **ORDERS** that, if the Prosecution seeks to tender Rule 65 *ter* numbers 02960, 05656, 00513, 05660, and 05665 through GH-024, they must be put to the witness during his testimony before the Trial Chamber.

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

Done this third day of December 2012,
At The Hague,
The Netherlands



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]

and Morina Decision, para. 13.