

**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: 16 January 2013
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 16 January 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTIONS FOR ADMISSION OF EVIDENCE
OF GH-111, GH-011, AND GH-147 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-111)”, filed confidentially with a confidential annex on 30 November 2012 (“First Motion”); the “Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-011)”, filed confidentially with a confidential annex on 10 December 2012 (“Second Motion”); and the “Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-147)”, filed publicly with a public annex on 11 December 2012 (“Third Motion”) (collectively referred to as “Motion”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-111, GH-011, and GH-147, 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

3. In relation to GH-111, the Prosecution requests the admission of two associated exhibits—Rule 65 *ter* 02364 and 05863—that, in its view, form an integral part of the tendered Rule 92 *ter* statement.³

4. In accordance with the protective measures in effect for GH-011, the Prosecution requests that the Rule 92 *ter* statement be admitted under seal.⁴ The Prosecution further requests the admission of three associated exhibits that, in its view, form an integral and inseparable part of GH-011’s tendered Rule 92 *ter* statement.⁵ The Prosecution requests that two of these associated exhibits be admitted under seal.⁶

5. In relation to GH-147, the Prosecution requests the admission of 62 associated exhibits that, in its view, form an integral part of the tendered Rule 92 *ter* statement.⁷

6. The Defence indicated that it would make no submissions in relation to the Motion.⁸

¹ First Motion, paras 1, 3; Second Motion, paras 1, 3; Third Motion, paras 1, 3, 6.

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

³ First Motion, paras 2, 5; *see* First Motion, confidential Annex A, p. 3.

⁴ Second Motion, para. 10.

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

⁶ Second Motion, para. 10.

⁷ Third Motion, para. 8; *see* Third Motion, public Annex A, pp. 3-10.

B. Applicable Law

7. 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

8. GH-111’s proposed Rule 92 *ter* statement contains information about (a) the situation in Erdut in 1992 and 1993 as relevant to charges in the Indictment; (b) Hadžić’s alleged interactions with members of the alleged JCE; (c) alleged crimes committed by members of the alleged JCE and their subordinates; and (d) alleged activities of Željko Ražnatović’s (“Arkan’s”) paramilitary unit in Erdut. The Chamber notes that Rule 65 *ter* 00982 is already admitted as P00275.¹³ The Trial Chamber notes that Rule 65 *ter* 02364 comprises a duplicate of the witness’s statement and a document that has already been admitted into evidence as P00275; it is therefore not necessary to admit Rule 65 *ter* 02364, and the Trial Chamber will order the Prosecution to remove it from eCourt in order to avoid further confusion. The Trial Chamber finds that the tendered statement

⁸ Email from Defence to Trial Chamber, 17 December 2012 (regarding GH-011 and GH-147); Email from Defence to Trial Chamber, 14 December 2012 (regarding GH-111).

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.

¹² *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

¹³ GH-091, 20 November 2012, T. 1520.

(Rule 65 *ter* 02365) and associated exhibit (Rule 65 *ter* 05863) are relevant, have probative value, and are appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

9. GH-011's proposed Rule 92 *ter* statement contains information about (a) the formations and command structure of military and paramilitary groups; (b) Hadžić's alleged leadership role in the Territorial Defence (TO) Command; (c) alleged activities of members of the alleged JCE; and (d) the alleged Serb takeover of Vukovar and events thereafter. The Prosecution requests that Rule 65 *ter* 06364, which is an extract from a series of photographs of persons alleged to have been killed at Ovčara, be added to the exhibit list.¹⁴ Considering that there is no objection from the Defence, the Trial Chamber will allow the addition of this document. 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*.

10. GH-147's proposed Rule 92 *ter* statement contains information about (a) the mandate, structure, and functioning of both the United Nations Protection Force ("UNPROFOR") in the former Yugoslavia and the United Nations Civilian Police ("UNCIVPOL"); (b) the alleged use of UNPROFOR monitors as human shields by Serb forces; (c) alleged activities of members of the alleged JCE; (d) the structure, functioning, and alleged illegal activities of Milan Martić's "Special Police" in the RSK; and (e) crimes allegedly committed against non-Serbs throughout the RSK. The Trial Chamber finds that in light of relevant situation reports tendered through GH-147, Rule 65 *ter* 05437—"an example" of a situation report—is not appropriate for admission. 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*—except for Rule 65 *ter* 05437, as indicated above.

D. Disposition

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


- (a) **GRANTS** the Prosecution leave to add Rule 65 *ter* 06364 to the exhibit list;
- (b) **DECIDES** that the statement of GH-111 (Rule 65 *ter* 02365) and the associated exhibit (Rule 65 *ter* 05863) are appropriate for admission into evidence;
- (c) **ORDERS** the Prosecution to remove Rule 65 *ter* 02364 from eCourt;

¹⁴ Second Motion, para. 9; *see* confidential annex A, p. 4.

- (d) **DECIDES** that the evidence of GH-011 is appropriate for admission into evidence;
- (e) **DECIDES** that the evidence of GH-147, except for Rule 65 *ter* 05437, is appropriate for admission into evidence; and
- (f) **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 sixteenth day of January 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]