

**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: 1 February 2013  
Original: English

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**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. John Hocking

**Decision:** 1 February 2013

**PROSECUTOR**

v.

**GORAN HADŽIĆ**

**PUBLIC**

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**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE  
OF GH-038 PURSUANT TO RULE 92 *ter***

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**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-038)”, filed publicly with a confidential annex on 24 December 2012 (“Motion”).

#### A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-038 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.<sup>1</sup> 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.<sup>2</sup> In accordance with the protective measures in effect for GH-038, the Prosecution requests that the tendered transcript of prior testimony, which was given in *Prosecutor v. Mrkšić et al.* (Case No. IT-95-13/1), be admitted under seal.<sup>3</sup> The Prosecution requests the admission of 44 associated exhibits that, in its view, form an integral and inseparable part of the tendered Rule 92 *ter* testimony.<sup>4</sup> The Prosecution requests that two of these associated exhibits be admitted under seal.<sup>5</sup>

3. The Defence indicated that it would make no submissions in relation to the Motion.<sup>6</sup>

#### 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,<sup>7</sup> the admission of exhibits where they accompany written statements or transcripts and form an “inseparable and indispensable” part of the evidence.<sup>8</sup> In order

<sup>1</sup> Motion, paras 1, 4.

<sup>2</sup> Motion, para. 1.

<sup>3</sup> Motion, para. 4, Confidential Annex A, p. 1.

<sup>4</sup> Motion, para. 5.

<sup>5</sup> See Motion, Confidential Annex A, pp. 8, 9.

<sup>6</sup> Email from the Defence to the Trial Chamber, 7 January 2013.

<sup>7</sup> *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.

<sup>8</sup> *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.*

to satisfy this requirement, the document must be one without which the witness's testimony would become incomprehensible or of lesser probative value.<sup>9</sup> 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.<sup>10</sup>

### C. Discussion

5. GH-038's proposed evidence contains information about events at the Vukovar General Hospital as charged in the Indictment and her detention by Serb forces after the fall of Vukovar. Considering the unique nature of GH-038's first-hand observations and the potential importance of her evidence in these proceedings, the Trial Chamber finds that it is not appropriate to admit the evidence pursuant to Rule 92 *ter* and that it is in the interests of justice to hear GH-038's evidence *viva voce*.

6. The Prosecution requests that Rule 65 *ter* 06375, which is a document containing comparisons between persons who were taken away from the Hospital and the remains of persons who were exhumed at Ovčara, be added to the exhibit list.<sup>11</sup> Considering that the document sought to be included is relevant and of sufficient importance to justify its addition at this stage of the trial and that there is no objection from the Defence, the Trial Chamber will allow the addition of this document.

### D. Disposition

7. Accordingly, the Trial Chamber, pursuant to Rules 54, 65 *ter*, 89(C), and 92 *ter* of the Rules, hereby

- (a) **GRANTS** the Prosecution leave to add the document designated with Rule 65 *ter* number 06375 to the exhibit list;

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*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.

<sup>9</sup> *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.


<sup>10</sup> *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

<sup>11</sup> Motion, paras 5, 8; *see* confidential Annex A, p. 9.

- (b) **DENIES** the Prosecution request to admit the evidence of GH-038 pursuant to Rule 92 *ter*; and
- (c) **INSTRUCTS** the Registry to take all appropriate and necessary measures to implement this decision.

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

Done this first day of February 2013,  
At The Hague,  
The Netherlands



Judge Guy Delvoie  
Presiding

[Seal of the Tribunal]