

**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: 22 April 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: 22 April 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
OF GH-135 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-135)”, filed on 20 February 2013 (“Motion”); the “Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 92*ter* (GH-135)”, filed on 6 March 2013 (“Response”);¹ and the “Prosecution Request for Leave to Reply and Reply to Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 92*ter* (GH-135)”, filed confidentially on 12 March 2013 (“Reply”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-135 pursuant to Rule 92 *ter* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), arguing that the evidence is probative, relevant, and reliable and meets the requirements for admission under that Rule.² 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.³ The Prosecution requests the admission of 74 associated exhibits that, in its view, form an integral and inseparable part of the tendered Rule 92 *ter* statement.⁴ The Prosecution requests that two of these associated exhibits be admitted under seal.⁵

3. In the Response, the Defence objects to the admission of GH-135’s direct testimony by written statement, rather than hearing her direct testimony orally.⁶ The Defence submits that the length and character of the statement warrant *viva voce* testimony.⁷ The Defence argues that GH-135’s testimony is unique and contains incriminatory allegations against Hadžić that are central to the Indictment⁸ and that, in addition to these considerations, the numerous associated exhibits tendered with the statement compound the Defence’s difficulty in identifying the “myriad inaccuracies that may be embedded therein.”⁹ The Defence argues that Rule 92 *ter* has its limits and a full direct examination would better assist the Defence in identifying issues relevant to credibility, particularly when a witness, such as GH-135, has given no previous oral testimony.¹⁰

¹ The Response was originally filed confidentially on 6 March 2013; however, it was made public pursuant to Defence Notice of 7 March 2013.

² Motion, para. 1.

³ Motion, para. 1.

⁴ Motion, para. 8, Annex A.

⁵ Motion, Annex A, *referring to* Rule 65 *ter* numbers 05178 and 05890.

⁶ Response, para 1.

⁷ Response, paras 4-6.

⁸ Response, paras 2-3, 5.

⁹ Response, paras 4, 7.

¹⁰ Response, paras 5-6, 8-9.

4. In the Reply, the Prosecution rejects the Defence's submissions that GH-135's witness statement may contain inaccuracies as legally unsubstantiated and factually speculative.¹¹ The Prosecution asserts that the Defence's concerns in relation to the credibility of the witness's statement are addressed by procedural safeguards pursuant to Rule 92 *ter*, which require that GH-135 attest to the accuracy of the statement before its admission and be present in court for cross-examination.¹² The Prosecution submits that, although the significance of a witness's evidence is a factor that may militate against admission under Rule 92 *ter*, this factor should only exceptionally prevent a party from using Rule 92 *ter* on these grounds.¹³ The Prosecution submits that, in respect of GH-135, the witness's experiences are largely reflected in documents and having GH-135 individually authenticate each document would require a lengthy direct examination and constitute an inefficient use of the Tribunal's time and resources.¹⁴

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.¹⁵ The jurisprudence of the Tribunal has applied the Rule as permitting, by necessary inference, the admission of exhibits where they accompany written statements or transcripts and form an “inseparable and indispensable” part of the evidence.¹⁶ 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.¹⁷ Moreover, the evidence sought to be admitted, whether a written statement or a transcript of oral testimony, must fulfil the general

¹¹ Reply, paras 3-4, 7.

¹² Reply, paras 2-3.

¹³ Reply, para. 6.

¹⁴ Reply, para. 5.

¹⁵ *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.

¹⁶ *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.

¹⁷ *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.

requirements of admissibility of Rule 89(C): the proposed evidence must be relevant and have probative value.¹⁸

C. Discussion

6. GH-135's proposed evidence contains information about the witness's experience as the Civilian Affairs Coordinator of the United Nations Protection Force ("UNPROFOR") for Sector East, which covered parts of the SAO SBWS region, from May 1992 to August 1993. The witness was responsible for facilitating the implementation of the Vance Plan. The witness proffers her account of (a) the alleged policy of "Serbianisation" of the government of the RSK; (b) the alleged crimes committed in Sector East by local authorities and Serb forces; (c) the witness's meeting with RSK authorities, including Hadžić; and (d) the mass graves at Lovas, Ernestinovo, Tordinici, and Ovčara. The Chamber finds that the information in the witness's statement is appropriate for admission pursuant to Rule 92 *ter*. Moreover, the Chamber considers that the Defence will have the opportunity to address any potential inaccuracies in the witness's statement during cross-examination.

7. The Chamber finds that the tendered associated documents listed in Annex A of the Motion form an inseparable and indispensable part of GH-135's evidence. The Chamber notes that, in Annex A of the witness's statement, GH-135 references one document with ERN 0172-1799-0172-1807. In the Motion, however, the Prosecution has split this document into two as Rule 65 *ter* numbers 01256 and 01257.¹⁹ The Chamber considers that Rule 65 *ter* numbers 01256 and 01257 should have been tendered as one document, as referenced in Annex A of GH-135's statement. The Chamber will therefore order that the Prosecution merge Rule 65 *ter* numbers 01256 and 01257.

4. The Chamber also notes that the following tendered associated exhibits have already been admitted into evidence: Rule 65 *ter* numbers 05160, 05161, 05163, 05168, 05170, and 05890.

5. The Chamber finds that GH-135's evidence is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

D. Disposition

8. Accordingly, the Chamber, pursuant to Rules 54, 89(C), 92 *ter*, and 126 *bis* of the Rules, hereby


¹⁸ *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

¹⁹ See Motion, Annex A, p. 3, referring to Rule 65 *ter* number 01256 (ERN 0172-1799-0172-1802) and Rule 65 *ter* number 01257 (ERN 0172-1800-0172-1807).

- (a) **GRANTS** the Prosecution leave to file the Reply;
- (b) **ORDERS** the Prosecution—by no later than 1 May 2013—to merge Rule 65 *ter* numbers 01256 and 01257 in eCourt; to remove any superfluous version from eCourt; and to file a written notice when it has done so;
- (c) **DECIDES** that the evidence of GH-135 is appropriate for admission into evidence; and
- (d) **INFORMS** the parties that the Chamber will make a final decision on whether to admit the evidence of GH-135, 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-second day of April 2013,
At The Hague,
The Netherlands



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]