

**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: 23 May 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: 23 May 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
OF GH-043 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 seized of the “Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-043)”, filed publicly with a confidential annex on 6 May 2013 (“Motion”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-043 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. The Defence indicated that it takes no position in relation to the Motion.³

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.⁴ 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 written evidence.⁵ 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.⁶ Moreover, the evidence

¹ Motion, paras 1, 3.

² Motion, para. 1.

³ Email from Defence to Trial Chamber and Prosecution, 21 May 2013.

⁴ *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) (confidential), 29 September 2009 (“*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.

⁵ *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.

⁶ *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.

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.⁷

C. Discussion

5. GH-043's proposed evidence, in the form of a written statement, contains information about, *inter alia*, (a) the alleged attacks conducted by the JNA on Vukovar and Šarengrad, including the alleged targeting of churches in Šarengrad, (b) Colonel Petar Grahovac's involvement in the alleged attack on Šarengrad, (c) the alleged forced evacuation of women and children from Šarengrad to Ilok, (d) alleged crimes committed by Serb paramilitaries, (e) GH-043's own flight from Šarengrad, and (f) the presence of European Community Monitoring Mission representatives who documented the damage in Šarengrad. The Trial Chamber finds that the tendered statement is relevant, has probative value, and is 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-043 is appropriate for admission into evidence; and

⁷ *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

- (b) **INFORMS** the parties that the Trial Chamber will make a final decision on whether to admit the evidence of GH-043, 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-third day of May 2013,
At The Hague,
The Netherlands



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]