

**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: 25 July 2014
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 25 July 2014

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR ADMISSION OF EVIDENCE OF
DGH-044 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 hereby seised of the “Defence Motion for Admission of Evidence of DGH-044 Pursuant to Rule 92 *ter*”, filed confidentially with a confidential annex on 1 July 2014 (“Motion”). The “Prosecution Response to Motion for Admission of Evidence of DGH-044 Pursuant to Rule 92 *ter*” was filed confidentially on 16 July 2014 (“Response”). On 23 July 2014, the Defence confidentially filed a “Request for Leave to Reply and Reply to Prosecution Response to Motion for Admission of Evidence of DGH-044 Pursuant to Rule 92 *ter*” (“Reply”).

A. Submissions

2. In the Motion, the Defence requests the admission of the written statement of DGH-044 pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence (“Rules”) subject to the witness’s in court affirmation.¹ The Defence submits DGH-044’s written statement is relevant and that its admission under Rule 92 *ter* of the Rules will promote “the expeditious conduct of proceedings.”² The Defence submits that the statement contains information directly relevant to (a) the formation, goals, and activities of the SDS; (b) DGH-044’s observations of Hadžić at various international meetings and at SDS regional board meetings; (c) the exodus of Serbs from Western Slavonia; and (d) discussions relating to the Vance Plan.³ The Defence asserts that it will need 1.5 hours for its examination of the witness as it intends to adduce “additional subsidiary details” relating to matters described in the witness’s statement.⁴

3. The Prosecution responds that it does not oppose the admission of the witness statement of DGH-044 pursuant to Rule 92 *ter* of the Rules,⁵ but requests that the Trial Chamber classify DGH-044 as a “regular 92*ter* witness” and only allow the Defence 30 minutes for examination-in-chief rather than the stipulated 1.5 hours.⁶ The Prosecution argues that the length of time requested by the Defence is unjustified on grounds that the additional details the Defence intends to adduce have already been addressed in the witness’s statement and are of tangential relevance to the Indictment.⁷ Alternatively, the Prosecution requests that the Trial Chamber order the Defence to provide further detail as to the evidence to be adduced during DGH-044’s *viva voce* testimony.⁸ Additionally, the

¹ Motion, paras 1, 7

² Motion, paras 5-6.

³ Motion, para. 5.

⁴ Motion, para. 6.

⁵ Response, para. 1.

⁶ Response, paras 1, 3.

⁷ Response, para. 2, *referring to* Corrigendum and Addendum to Rule 65 *ter* Filings, 23 May 2014, confidential Annex B and Motion, confidential Annex, paras 10-11.

⁸ Response, para. 2.

Prosecution reserves the right to seek a postponement of its cross-examination of DGH-044 should untimely provision of such information hinder the Prosecution's preparations.⁹ The Prosecution also requests that the Trial Chamber find the Defence in violation of Rule 67(A)(ii) of the Rules based upon the delayed disclosure of DGH-044's witness statement and consequently order the Defence to disclose all currently available Defence witness statements.¹⁰ The Prosecution also notes that DGH-044's statement was signed nearly one month before his interview was conducted.¹¹

4. In the Reply, the Defence seeks leave to reply and files its reply in order to "correct misstatements of law and fact" in the Response.¹² With regard to the Prosecution's assertion that 1.5 hours for the examination of DGH-044 is unjustified, the Defence submits that 1.5 hours is reasonable, appropriate, and consistent with the time-limit set for the presentation of its case, and that the Prosecution has failed to show cause for any change in the time for direct examination.¹³ The Defence also submits that given that the statement of DGH-044 is both focused on the issues in the case and an accurate and up-to-date reflection of the witness's testimony, the description of the *viva voce* component in the witness summary for DGH-044 is "much less significant in conveying the substance of the witness's anticipated testimony" than it might be otherwise.¹⁴ The Defence further submits that it has not violated Rule 67(A)(ii) of the Rules because it disclosed DGH-044's witness statement to the Prosecution on 28 May 2014, which was the same day the statement was signed, and not on 2 July 2014 as represented by the Prosecution.¹⁵ The Defence notes that the English translation of the witness's statement erroneously indicates the date of signature to be 28 March 2014, and points out that the original statement shows the correct date of signature as 28 May 2014.¹⁶

B. Applicable Law

5. Rule 92 *ter* of the Rules provides:

(A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:

(i) the witness is present in court;

(ii) the witness is available for cross-examination and any questioning by the Judges; and

⁹ Response, para. 2.

¹⁰ Response, paras 2-3.

¹¹ Response, para. 2.

¹² Reply, para. 1.

¹³ Reply, para. 8.

¹⁴ Reply, paras 4-5.

¹⁵ Reply, para. 2.

¹⁶ Reply, para. 2, fn. 2.

(iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

(B) Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.

6. The main objective of Rule 92 *ter* of the Rules is to ensure an effective and expeditious trial in accordance with the rights of the accused.¹⁷ The jurisprudence of the Tribunal has also 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.¹⁸ 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.¹⁹ 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) of the Rules—the proposed evidence must be relevant and have probative value.²⁰

C. Discussion

7. As a preliminary matter, the Trial Chamber notes that the Prosecution's submissions relating to disclosure under Rule 67(A)(ii) of the Rules have been addressed in a decision issued by the Trial Chamber on 25 July 2014.²¹ Accordingly, this decision will not address these submissions.

8. The Trial Chamber also notes that there is a discrepancy between the original version of DGH-044's written statement²² and its English translation in terms of the date on which DGH-044 signed the statement. The Trial Chamber finds the original version of DGH-044's witness statement authoritative and will accordingly look to that version to determine the date DGH-044 signed the statement.

9. The Trial Chamber will now address the admission of DGH-044's evidence under Rule 92 *ter* of the Rules. DGH-044's proposed evidence, in the form of a written statement, contains

¹⁷ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on the Application of Rule 92 *ter* of the Rules, 3 July 2007, p. 2; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Motion to Convert *Viva Voce* Witnesses to Rule 92 *ter* Witnesses, 31 May 2007, p. 2.

¹⁸ *Prosecutor v. Đorđević*, Case No. IT-05-87/1-T, Decision on Vlastimir Đorđević's Motions for Admission of Evidence Pursuant to ICTY Rule 92*ter*, 22 January 2010 ("*Đorđević* Decision"), para. 7; *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. 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 ("*Stanišić and Simatović* Decision"), para. 19.

¹⁹ *Đorđević* Decision, para. 7; *Lukić and Lukić* Decision, para. 15; *Stanišić and Simatović* Decision, para. 19.

²⁰ *Đorđević* Decision, para. 5; *Lukić and Lukić* Decision, paras 15-16.

²¹ Decision on the Prosecution Motion Requesting the Defence to Submit a Revised Rule 65 *ter* Witness List and Witness Summaries and for Disclosure in Accordance with Rule 67(A)(ii) and the Trial Chamber's Orders, 25 July 2014 ("*Decision on Defence Rule 65 ter* Witness List"), paras 37-39.

information about, *inter alia*, (a) historical and political developments, including the formation, goals, and activities of the SDS party between 1990-1992;²³ (b) Goran Hadžić's presence at various international meetings and meetings of the SDS;²⁴ and (c) discussions relating to the Vance Plan.²⁵ The Trial Chamber accordingly considers that the proposed evidence is appropriate to be admitted in written form and finds that the tendered statement is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter* of the Rules.

10. With regard to the length of the Defence's prospective examination-in-chief of DGH-044, the Trial Chamber recalls that it reviewed the Defence's Rule 65 *ter* witness list and the times allocated for each witness, including the 1.5 hours allocated for the *viva voce* testimony of DGH-044, when it granted the Defence 140 hours for its case-in-chief.²⁶ In relation to the Prosecution's alternative request that the Trial Chamber order the Defence to provide further detail as to the evidence to be adduced during DGH-044's *viva voce* testimony, the Trial Chamber notes that it has considered this matter in a decision issued on 25 July 2014.²⁷ The Trial Chamber therefore considers that these issues have already been addressed and finds no reason to adjust the time allocated for the examination of DGH-044 or to order a more detailed witness summary.

D. Disposition

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

- a) **GRANTS** the Defence leave to file the Reply;
- b) **DECIDES** that the written statement of DGH-044 is appropriate for admission into evidence; and

²² Rule 65 *ter* number 1D03428.

²³ Rule 65 *ter* number 1D03428, paras 3-8.

²⁴ Rule 65 *ter* number 1D03428, paras 9-10, 18.

²⁵ Rule 65 *ter* number 1D03428, para. 16.

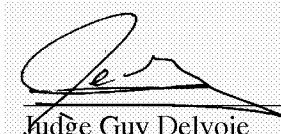
²⁶ See Decision on the Application of Rule 73 *ter* (E) and on Defence Motion to Modify the Trial Schedule During the Testimony of Mr. Hadžić, 24 June 2014, paras 2-4.

²⁷ Decision on Defence Rule 65 *ter* Witness List, para. 23.

- c) **INFORMS** the parties that the Trial Chamber will make a final decision on whether to admit the written statement of DGH-044, 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-fifth day of July 2014,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]