

**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 September 2014
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Order: 22 September 2014

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR ADMISSION OF EVIDENCE OF
DGH-006, DGH-076, AND DGH-087 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 “Defence Motion for Admission of Evidence of DGH-006 Pursuant to Rule 92 *ter*”, filed confidentially with a confidential annex on 20 August 2014 (“DGH-006 Motion”); the “Defence Motion for Admission of Evidence of Mirko Jović (DGH-076) Pursuant to Rule 92 *ter*”, filed with a confidential annex on 20 August 2014 (“DGH-076 Motion”); and the “Defence Motion for Admission of Evidence of DGH-087 Pursuant to Rule 92 *ter*”, filed confidentially with a confidential annex on 28 August 2014 (“DGH-087 Motion”) (collectively referred to as “Motion”). The “Prosecution Response to Motion for Admission of Evidence of DGH-006 Pursuant to Rule 92 *ter*” was filed confidentially on 4 September 2014 (“DGH-006 Response”); the “Prosecution Response to Motion for Admission of Evidence of DGH-076 Pursuant to Rule 92 *ter*” was filed on 4 September 2014 (“DGH-076 Response”); and the “Prosecution Response to Defence Motion for Admission of Evidence of DGH-087 Pursuant to Rule 92 *ter*” was filed confidentially on 9 September 2014 (“DGH-087 Response”).

A. Submissions

2. In the Motion the Defence requests the admission of the evidence of DGH-006, DGH-076, and DGH-087 pursuant to Rule 92 *ter* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), subject to the witness’s in court affirmation.¹ The Defence submits that the evidence is relevant and probative.² The Defence further submits that the evidence of these witnesses could not be adduced within the time scheduled for their examinations absent the admission of the tendered evidence pursuant to Rule 92 *ter* of the Rules.³

3. The Prosecution responds that it does not object to the admission of the evidence of DGH-006, DGH-076, or DGH-087, subject to compliance with the conditions contained in Rule 92 *ter*.⁴

B. Applicable Law

4. 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:

¹ DGH-006 Motion, paras 1, 8; DGH-076 Motion, paras 1, 8; and DGH-087 Motion, paras 1, 8.

² DGH-006 Motion, paras 5-6; DGH-076 Motion, paras 5-6; and DGH-087 Motion, paras 5-6.

³ DGH-006 Motion, para. 7; DGH-076 Motion, para. 7; and DGH-087 Motion, para. 7.

⁴ DGH-006 Response, para. 1; DGH-076 Response, para. 2; and DGH-087 Response, para. 3.

- (i) the witness is present in court;
- (ii) the witness is available for cross-examination and any questioning by the Judges; and
- (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.

5. 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.⁵ 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.⁶ 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.⁷ 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.⁸

C. Discussion

6. **DGH-006:** The proposed evidence of DGH-006, in the form of a written statement, contains information about, *inter alia*, (a) the attack on Dalj;⁹ (b) the SAO SBWS police formation and tasks;¹⁰ and (c) an alleged killing incident included in the Indictment.¹¹ The Chamber finds that the proposed evidence is appropriate to be admitted in written form and finds that the tendered evidence is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter* of the Rules.

7. **DGH-076:** The proposed evidence of DGH-076, in the form of a written statement, contains information about, *inter alia*, (a) the foundation of the Serbian National Renewal Party (“SNO”), in

⁵ *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.

⁶ *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.

⁹ *Đorđević* Decision, para. 7; *Lukić and Lukić* Decision, para. 15; *Stanišić and Simatović* Decision, para. 19.

⁸ *Đorđević* Decision, para. 5; *Lukić and Lukić* Decision, paras 15-16.

⁹ Rule 65 *ter* number 02438, p. 4-5.

¹⁰ Rule 65 *ter* number 02438, pp. 5-6.

¹¹ Rule 65 *ter* number 02438, pp. 6-7.

1990, and the emerging multiparty system in Serbia;¹² (b) Serbian volunteers who went to Croatia;¹³ (c) the political scenario in Serbia concerning alleged members of the alleged JCE such as Slobodan Milošević and Vojislav Šešelj;¹⁴ (d) a meeting between DGH-076 and Goran Hadžić in Erdut, wherein Arkan was in charge of the security;¹⁵ and (e) the incident at the Lovas minefield.¹⁶ The Chamber accordingly finds that the proposed evidence is appropriate to be admitted in written form and finds that the tendered evidence is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter* of the Rules.

8. **DGH-087:** The proposed evidence of DGH-087, in the form of a written statement, contains information about, *inter alia*, (a) the detention of Croat fighters from Vukovar at Sremska Mitrovica including their mistreatment;¹⁷ and (b) a visit by Goran Hadžić to Sremska Mitrovica.¹⁸ The Chamber finds that the proposed evidence is appropriate to be admitted in written form and finds that the tendered evidence is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter* of the Rules.

¹² Rule 65 *ter* number 1D03300, pp. 2-8.

¹³ Rule 65 *ter* number 1D03300, pp. 11-16.

¹⁴ Rule 65 *ter* number 1D03300, pp. 5-11.

¹⁵ Rule 65 *ter* number 1D03300, p. 14.

¹⁶ Rule 65 *ter* number 1D03300, p. 14.

¹⁷ Rule 65 *ter* number 1D02856.1, paras 2-5, 7.

¹⁸ Rule 65 *ter* number 1D02856.1, para. 6.

D. Disposition

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

- (a) **DECIDES** that the written statements of DGH-006, DGH-076, and DGH-087, Rule 65 *ter* numbers 02438, 1D03300 and 1D02856.1, respectively, are appropriate for admission into evidence; and
- (b) **INFORMS** the parties that the Trial Chamber will make a final decision on whether to admit the evidence of DGH-006, DGH-076, and DGH-087, if the conditions set forth in Rule 92 *ter* of the Rules have been fulfilled, when each witness gives evidence in these proceedings.

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

Done this twenty-second day of September 2014,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]