

**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: 8 November 2012
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 8 November 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTIONS FOR ADMISSION OF EVIDENCE
OF GH-134 and GH-119 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 of GH-134 Pursuant to Rule 92 *ter*”, filed confidentially with confidential annex on 12 October 2012 (“First Motion”), and “Prosecution Motion for Admission of Evidence of GH-119 Pursuant to Rule 92 *ter*”, filed publicly with confidential annex on 15 October 2012 (“Second Motion”) (collectively referred to as “Motion”). The Defence confidentially filed its “Response to Prosecution Motions for Admission of Evidence Pursuant to Rule 92 *ter* (GH-134 and GH-119)” on 29 October 2012 (“Response”). On 6 November 2012, the Prosecution filed confidentially its “Prosecution Request for Leave to Reply and Reply to Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-134 and GH-119) (“Reply”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-134 and GH-119, 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. 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.¹

3. In the Response, the Defence opposes the admission into evidence of GH-134 and GH-119’s evidence pursuant to Rule 92 *ter*. The Defence submits that the Prosecution is tendering statements that are approximately sixteen years old and that “may deviate substantially from the witness’s current recollection of events.”² The Defence requests that the Trial Chamber deny the Motion in order to dissuade the Prosecution from continuing this prejudicial practice.³

4. In the Reply, the Prosecution argues that the Defence’s argument that the fact that the statements were taken 16 years ago automatically means that they will have to be significantly adjusted is speculative and unsubstantiated. According to the Prosecution, the Defence fails to identify any factual errors in either of the statements. The Prosecution points out that the Defence ignores the procedural safeguards governing the admission of evidence pursuant to Rule 92 *ter*, which adequately address any concerns about the date of the witness statements.⁴ Finally, the

¹ First Motion, para. 1; Second Motion, para. 1. The Prosecution, at paragraph 2 of the First Motion, states that it intends to tender associated exhibits through GH-134, but this appears to be a typographical error.

² Response, para. 2.

³ Response, para. 2.

⁴ Reply, para. 2.

Prosecution observes that the Defence's arguments have already been considered and rejected in prior Rule 92 *ter* decisions of the Trial Chamber.⁵

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. The jurisprudence of the Tribunal has applied the Rule as permitting, by necessary inference,⁶ the admission of exhibits where they accompany written statements or transcripts and form an “inseparable and indispensable” part of the evidence.⁷ 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.⁸ 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.⁹

C. Discussion

6. GH-134's proposed Rule 92 *ter* statement contains information about (a) the alleged JNA attack on Lovas and ensuing takeover in October 1991; (b) the alleged detention, interrogation, and physical abuse of Croat men between the ages of 18 and 55 at the community “Zadruga” building on 17 October 1991; and (c) the alleged events of 18 October 1991 at the minefields at Lovas. 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*. The Defence's concerns about the statement may be addressed during its cross-examination of the witness.

⁵ Reply, para. 3.

⁶ *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.

⁷ *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.

⁸ *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.

⁹ *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

6. GH-119's proposed Rule 92 *ter* statement contains information about (a) the alleged shelling of Lovas on 10 October 1991 by Serb Forces and the subsequent takeover; (b) the witness's alleged treatment by members of the Serb police; (c) the alleged mistreatment of Croat men at the community "Zadruga" building by Serb Forces on 17 October 1991; and (d) the events of 18 October 1991 at the minefields at Lovas. 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*. The Defence's concerns about the statement may be addressed during its cross-examination of the witness.


D. Disposition

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

- (a) **GRANTS** the Prosecution leave to file the Reply;
- (b) **DECIDES** that the evidence of GH-134 and GH-119 is 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, if the conditions set forth in Rule 92 *ter* have been fulfilled when the witnesses give evidence in these proceedings.

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

Done this eighth day of November 2012,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]