

**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: 9 November 2012  
Original: English

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**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. John Hocking

**Decision:** 9 November 2012

**PROSECUTOR**

v.

**GORAN HADŽIĆ**

**PUBLIC**

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**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE  
OF GH-094 AND GH-103 PURSUANT TO RULE 92 *ter***

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**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-094)”, filed confidentially with a confidential annex on 11 October 2012 (“First Motion”), and the “Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-103)”, filed confidentially with a confidential annex on 19 October 2012 (“Second Motion”) (collectively referred to as “Motion”). The Defence confidentially filed its “Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-094)” on 25 October 2012 (“Response”). The Prosecution confidentially filed the “Prosecution Request for Leave to Reply and Reply to Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-094)” on 31 October 2012 (“Reply”).

#### A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-094 and GH-103, 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.<sup>1</sup> 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.<sup>2</sup> In relation to GH-103, the Prosecution requests the admission of fifteen associated exhibits that, in its view, form an integral part of the tendered Rule 92 *ter* statement.<sup>3</sup>

3. The Defence opposes the admission into evidence of GH-094’s statement because it was prepared sixteen years ago and its content has not been reconfirmed by GH-094.<sup>4</sup>

4. The Defence indicated that it would make no submissions in relation to the Second Motion.<sup>5</sup>

5. In the Reply, the Prosecution submits that the fact that GH-094’s statement was taken sixteen years ago does not automatically mean that it would have to be significantly adjusted.<sup>6</sup> The Prosecution argues that procedural safeguards, such as requiring GH-094 to attest to the accuracy of

<sup>1</sup> First Motion, paras 1, 4; Second Motion, paras 1, 4, 5.

<sup>2</sup> First Motion, para. 1; Second Motion, para. 1.

<sup>3</sup> Second Motion, para. 7.

<sup>4</sup> Response, paras 1-3.

<sup>5</sup> Email from Defence to Trial Chamber, 2 November 2012.

<sup>6</sup> Reply, para. 2.

the statement before its admission pursuant to Rule 92 *ter* and cross-examination, adequately address any concerns about the date of GH-094's witness statement.<sup>7</sup>

### B. Applicable Law

6. 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,<sup>8</sup> the admission of exhibits where they accompany written statements or transcripts and form an “inseparable and indispensable” part of the evidence.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

### C. Discussion

7. GH-094's proposed Rule 92 *ter* statement contains information about (a) the rising tensions in and around Bapska in mid-1991 leading up to an ultimatum to the residents of Bapska by the Serb Forces; (b) the alleged shelling of Bapska; (c) the alleged flight of Bapska villagers to Ilok; and (d) their alleged expulsion from Ilok to surrounding areas.<sup>12</sup> 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.

<sup>7</sup> Reply, para. 2.

<sup>8</sup> *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.

<sup>9</sup> *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.

<sup>10</sup> *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.

<sup>11</sup> *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

<sup>12</sup> First Motion, para. 4.

8. GH-103's proposed Rule 92 *ter* statement contains information about (a) the alleged shelling of Vukovar from August to November 1991 and (b) the alleged events at the Vukovar hospital thereafter.<sup>13</sup> The associated exhibits are discussed in the Rule 92 *ter* statement. The Trial Chamber is unable to make a decision with respect to the document with Rule 65 *ter* number 02878 because it does not appear to be available to the Chamber in eCourt. Therefore, the Trial Chamber will deny its admission at this point in time but will remain seised of the application. The Trial Chamber finds that the tendered statement and the remaining associated exhibits are relevant, have probative value, and are appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

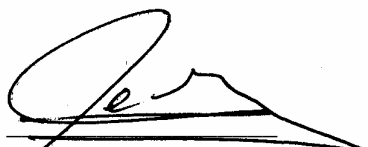
#### **D. Disposition**

9. 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-094 and GH-103, with the exception of the document designated with Rule 65 *ter* number 02878, is appropriate for admission into evidence; and
- (c) **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 ninth day of November 2012,  
At The Hague,  
The Netherlands.



Judge Guy Delvoic  
Presiding

**[Seal of the Tribunal]**

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<sup>13</sup> Second Motion, paras 5, 6.