

**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: 18 January 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: 18 January 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
OF GH-120 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 Pursuant to Rule 92 *ter* (GH-120)”, filed publicly with a public annex on 12 December 2012 (“Motion”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-120, 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 The Prosecution requests the admission of GH-120’s ICTY testimony in *Prosecutor v. Mrkšić et al.* (Case No. IT-95-13/1)³ and eight associated exhibits that, in its view, form an integral part of the witness’s evidence.⁴

3. The Defence has no submissions on the Motion.⁵

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. 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

¹ Motion, paras 1, 3-4.

² Motion, para. 1.

³ In paragraphs 2 and 8 of the Motion, the Prosecution refers to a proposed Rule 92 *ter* statement, but it appears that there is no statement being submitted and that the Prosecution is referring to the witness’s prior testimony in *Mrkšić et al.*

⁴ Motion, paras 4-5.

⁵ Email from Defence to Trial Chamber, 14 December 2012.

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

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

5. GH-120's proposed Rule 92 *ter* package contains information about, *inter alia*, (a) the JNA's alleged attack on Vukovar and conditions of life during the siege; (b) the various warring parties including the JNA, Serb paramilitaries, and the ZNG; (c) the alleged destruction of Vukovar and its hospital; (d) the surrender of Vukovar on 18 November 1991; and (e) the alleged deportation of the population of Mitnica to Sremska Mitrovica prison in Serbia and the alleged conditions of detention there. The Trial Chamber takes into account that the witness will appear before the Chamber and be available for cross-examination. The tendered associated exhibits are discussed in the witness's prior testimony and form an inseparable and integral part of her evidence. The Trial Chamber finds that the evidence 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-120 is appropriate for admission into evidence; and


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.

- (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 witness gives evidence in these proceedings.

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

Done this eighteenth day of January 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]

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