

**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: 28 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: 28 January 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTIONS FOR ADMISSION OF EVIDENCE
OF GH-110, GH-129, AND GH-130 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-110)”, filed publicly with a confidential annex on 21 December 2012 (“First Motion”); the “Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-129)”, filed confidentially with a confidential annex on 21 December 2012 (“Second Motion”); and the “Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-130)”, filed publicly with a public annex on 21 December 2012 (“Third Motion”) (collectively referred to as “Motion”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-110, GH-129, and GH-130, 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

3. In relation to GH-110, the Prosecution requests the admission of 43 associated exhibits that, in its view, form an integral and inseparable part of the tendered Rule 92 *ter* statement.³ The Prosecution requests that one of these associated exhibits be admitted under seal.⁴

4. In relation to GH-129, the Prosecution requests the admission under seal of one associated exhibit.⁵

5. In relation to GH-130, the Prosecution requests the admission of 35 associated exhibits that, in its view, form an integral part of the tendered Rule 92 *ter* statement.⁶ The Prosecution requests that one of these associated exhibits be admitted under seal.⁷

6. The Defence indicated that it would make no submissions in relation to the Motion.⁸

¹ First Motion, paras 1, 3, 6; Second Motion, paras 1, 3; Third Motion, paras 1, 3, 5.

² First Motion, para. 1; Second Motion, para. 1; Third Motion, para. 1.

³ First Motion, paras 2, 9; *see* First Motion, confidential Annex A, pp. 4-9.

⁴ First Motion, para. 9; *see* First Motion, confidential Annex A, p. 5.

⁵ Second Motion, paras 4, 8; *see* Second Motion, confidential Annex A, p. 4.

⁶ Third Motion, para. 4; *see* Third Motion, public Annex A, pp. 3-4.

⁷ Third Motion, para. 4; *see* Third Motion, public Annex A, p. 3.

⁸ Email from the Defence to the Trial Chamber, 4 January 2013.

B. Applicable Law

7. 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,⁹ the admission of exhibits where they accompany written statements or transcripts and form an “inseparable and indispensable” part of the evidence.¹⁰ 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.¹¹ 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.¹²

C. Discussion

8. GH-110’s proposed Rule 92 *ter* statement contains information about (a) the structure and functioning of Serb military forces and Territorial Defence (“TO”) units; (b) his alleged interactions with members of the alleged joint criminal enterprise (“JCE”); (c) the evacuation and transfer of Croatian HDZ prisoners to the Ovčara hangar; and (d) alleged crimes committed by Serb forces at Ovčara on 20 November 1991. The Trial Chamber notes that the Prosecution publicly tenders Rule 65 *ter* 06031, 06045, 06051, 06085, 06090, 06041, 06034, 06052, 06058, 06063, 06096, 06075, and 06079. However, these 13 associated exhibits seem to be designated as confidential in eCourt. The Prosecution may therefore wish to review its position in relation to the exhibits indicated above. The Chamber notes that, in relation to the associated exhibit described as “Strictly Confidential Order No. 32-1 signed by Lt. Col. Milorad Vojnović appointing Jan Marcek as commander in the village of Ovčara in accordance with OS armed forces rules”, Rule 65 *ter* 00633 provides the

⁹ *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.

¹⁰ *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.

¹¹ *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.

¹² *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

correct link to the document in eCourt.¹³ Similarly, for the document described as “Yugoslav People’s Army Order signed by Milorad Vojnović regulating the issue of establishing military authority and security of the commands and units”, Rule 65 *ter* 00676 provides the correct link to the document in eCourt.¹⁴ The Trial Chamber notes that Rule 65 *ter* 00640, 03075, and 00677, which are numbers also assigned to these documents, do not seem to exist in eCourt. The Trial Chamber finds that the tendered statement and associated exhibits are relevant, have probative value, and are appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

9. GH-129’s proposed Rule 92 *ter* testimony from *Prosecutor v. Šešelj* contains information about (a) the formation, command structure, and functioning of TO units; (b) alleged actions of members of the alleged JCE; and (c) the witness’s direct participation as a TO member in crimes allegedly committed against non-Serbs at Ovčara. The witness proffers a first-hand account of (a) the transfer of prisoners to the Ovčara farm, (b) the Serb forces chain of command at Ovčara, (c) alleged abuse and killings of individual prisoners at the hangar at Ovčara, and (d) the alleged systematic murder of prisoners in a nearby pit and the subsequent cover-up. The Chamber observes that there is a lack of coherency in the transcript of the witness’s evidence in the *Šešelj* trial due to the poor nature of the *pro se* accused’s examination. The Trial Chamber therefore finds that it is not appropriate, in the present circumstances, to admit the evidence pursuant to Rules 89(C) and 92 *ter* and that it is in the interests of justice to hear the evidence of witness GH-129 *viva voce*.

10. GH-130’s proposed Rule 92 *ter* statement contains information about (a) the mandate, structure, and functioning of both the United Nations Protection Force (“UNPROFOR”) in the former Yugoslavia and the United Nations Civilian Police (“UNCIVPOL”) in the SBWS region; (b) the witness’s interactions with Serbian government and military officials; (c) alleged discrimination against non-Serbs by Serb forces; and (d) the alleged systematic forcible displacement of non-Serbs by Serb forces. The Trial Chamber notes that the Prosecution attaches 13 documents without ERN or Rule 65 *ter* numbers to the end of the witness’s Rule 92 *ter* witness statement.¹⁵ The Trial Chamber does not find it appropriate to admit these 13 documents as a constituent part of the Rule 92 *ter* statement and finds that they should have been tendered as 13 individual associated exhibits with the requisite identification numbers in the Annex to the Motion. The Trial Chamber will therefore deny admission of the evidence of the witness pursuant to Rule 92 *ter*, without prejudice to a further application in accordance with the foregoing. In the event that the Prosecution files such a motion, a new Rule 92 *ter* statement should be prepared, referencing the associated exhibits by their Rule 65 *ter* numbers.

¹³ First Motion, confidential Annex, p. 5.

¹⁴ First Motion, confidential Annex, p. 5.

¹⁵ GH-130, Rule 65 *ter* 05964, Witness Statement, para. 6.

D. Disposition

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

- (a) **DECIDES** that the evidence of GH-110 is appropriate for admission into evidence;
- (b) **INFORMS** the parties that the Trial Chamber will make a final decision on whether to admit the evidence of GH-110, if the conditions set forth in Rule 92 *ter* have been fulfilled, when the witness gives evidence in these proceedings;
- (c) **DENIES** the Prosecution request to admit the evidence of GH-129 pursuant to Rule 92 *ter*; and
- (d) **DENIES** the Prosecution request to admit the evidence of GH-130 pursuant to Rule 92 *ter*, without prejudice to a further application in accordance with this decision.

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

Done this twenty-eighth day of January 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]