

**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 February 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 February 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION RENEWED MOTION FOR ADMISSION OF
EVIDENCE OF 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 seized of the “Prosecution Renewed Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-130) Filed 21 December 2012”, filed publicly with a confidential annex on 19 February 2013 (“Motion”).

A. Submissions

2. In the Motion, the Prosecution renews the “Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-130)” of 21 December 2012 (“First Motion”), with two particular changes made pursuant to the Trial Chamber’s initial decision in relation to GH-130’s evidence.¹ As a substitute for GH-130’s original Rule 92 *ter* statement, the Prosecution tenders an abridged version of that statement along with a separate supplemental statement, which cross-references the 13 attachments referenced in the abridged statement to their applicable Rule 65 *ter* and ERN numbers.² The Prosecution submits that, in all other respects, the First Motion is incorporated by reference, including its request for the admission of 35 associated exhibits—one of which is tendered under seal—which, in its view, form an integral part of the tendered Rule 92 *ter* statement.³

3. The Defence does not oppose the Motion.⁴

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.⁵ The jurisprudence of the Tribunal has 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 evidence.⁶ In order

¹ Motion, para. 1; Decision on Prosecution Motion for Admission of Evidence of GH-110, GH-129, and GH-130 Pursuant to Rule 92 *ter*, 28 January 2013 (“Decision of 28 January 2013”), paras 10, 11(d).

² Motion, paras 1, 4, 5. The abridged version of GH-130’s Rule 92 *ter* statement (Rule 65 *ter* 05964.1) and the supplemental statement (Rule 65 *ter* 06390) have been uploaded to eCourt.

³ Motion, para. 2; First Motion, para. 4; *see* First Motion, Annex A, pp. 3-4.

⁴ Email from the Defence to the Trial Chamber, 25 February 2013.

⁵ *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.

⁶ *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

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): the proposed evidence must be relevant and have probative value.⁸

C. Discussion

5. The Trial Chamber notes that GH-130's abridged statement and supplemental statement contain 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.⁹ The Trial Chamber notes the Prosecution's changes to the form of the tendered evidence in light of its Decision of 28 January 2013 in which it denied the First Motion without prejudice. The Trial Chamber now considers that the witness's Rule 92 *ter* package has been tendered in an appropriate form. The Trial Chamber finds that the tendered abridged statement, the supplemental statement, and the 35 associated exhibits are relevant, have probative value, and are 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-130 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-130, if the conditions set forth in Rule 92 *ter* have been fulfilled, when the witness gives evidence in these proceedings;

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.

⁷ *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.


⁸ *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

⁹ Decision, para. 10.

- (c) **ORDERS** the Prosecution—by no later than 6 March 2013—to remove GH-130’s original Rule 92 *ter* witness statement (Rule 65 *ter* 05964) from eCourt;
- (d) **ORDERS** *ex proprio motu* that Rule 65 *ter* 06390 and 05964.1 be added to the Prosecution’s Exhibit List; and
- (e) **INSTRUCTS** the Registry to take all necessary and appropriate measures to implement this decision.

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

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



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]