

**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: 16 May 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: 16 May 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
OF GH-164 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 Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-164)”, filed publicly with a confidential annex on 25 April 2013 (“Motion”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-164 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 it previously sought to tender GH-164’s evidence pursuant to Rule 92 *bis* but was denied admission under that Rule; however, the Trial Chamber noted that the Prosecution could seek to admit the evidence pursuant to Rule 92 *ter* or call the witness *viva voce*.² The Prosecution states that it has revised the summary of the evidence of GH-164 for admission pursuant to Rule 92 *ter*.³ 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.⁴ The Prosecution also seeks the addition of 20 associated exhibits, 17 of which are under seal; in the view of the Prosecution, these exhibits form an integral and inseparable part of GH-164’s tendered evidence.⁵

3. The Defence indicated that it takes no position in relation to the Motion.⁶

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.⁷ The jurisprudence of the Tribunal has applied the Rule as permitting, by necessary inference, the admission of exhibits where they accompany written

¹ Motion, paras 1-3.

² Motion, para. 1; Decision on Prosecution Motion to Admit GH-164’s Evidence Pursuant to Rule 92 *bis*, 22 April 2013 (“Decision of 22 April 2013”), para. 15; Prosecution Motion to Admit GH-164’s Evidence Pursuant to Rule 92 *bis*, 14 January 2013 (“Rule 92 *bis* Motion”).

³ Motion, para. 2, confidential Annex A.

⁴ Motion, para. 1.

⁵ Motion, paras 2-3, confidential Annex A.

⁶ Email from Defence to Trial Chamber and Prosecution, 9 May 2013.

⁷ *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) (confidential), 29 September 2009 (“*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.

statements or transcripts and form an “inseparable and indispensable” part of the evidence.⁸ 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.⁹ 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.¹⁰

C. Discussion

5. GH-164’s proposed evidence, in the form of a written statement, contains information about, *inter alia*, (a) the operations and report writing methodology of the ECMM while it was active in the former Yugoslavia during the period relevant to the Indictment, (b) crimes allegedly committed in the former Yugoslavia, and (c) interactions between the ECMM and the authorities in the regions where it operated.¹¹ The Trial Chamber recalls that it previously determined that the documents discussed in GH-164’s Rule 92 *ter* statement form an inseparable and indispensable part of his evidence and that the tendered evidence is relevant and has probative value.¹² 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*.

6. The Trial Chamber notes that the Prosecution tenders only the portions of Rule 65 *ter* number 01402 (R105-8988-R105-8991 and R105-8996-R105-8999) to which the Defence did not object during the previous litigation over this witness’s evidence.¹³ However, the version of this document on eCourt contains the entire document. The Trial Chamber will therefore order the Prosecution to replace the version on eCourt with a version containing only the tendered portions.

⁸ *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.

⁹ *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.

¹⁰ *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

¹¹ Decision of 22 April 2013, para. 14; Rule 92 *bis* Motion, para. 6; Rule 65 *ter* number 06379.

¹² Decision of 22 April 2013, para. 14.

¹³ Motion, para. 3, fn. 6; Prosecution Request for Leave to Reply and Reply to Response to Prosecution Motion to Admit GH-164’s Evidence Pursuant to Rule 92*bis*, 4 February 2013, para. 8, fn. 18; Response to Prosecution Motion to Admit GH-164’s Evidence Pursuant to Rule 92*bis*, 28 January 2013, para. 11.

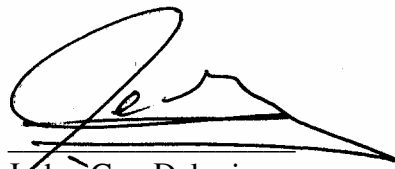
D. Disposition

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

- (a) **DECIDES** that the evidence of GH-164 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-164, if the conditions set forth in Rule 92 *ter* have been fulfilled, when the witness gives evidence in these proceedings;
- (c) **ORDERS** the Prosecution—by no later than 24 May 2013—(a) to replace the existing version of Rule 65 *ter* number 01402 on eCourt with a new version containing only the specified portions: R105-8988-R105-8991 and R105-8996-R105-8999 and (b) to notify, via a written filing, the Trial Chamber, Defence, and Registry that this has been completed;
- (d) **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 sixteenth day of May 2013,
At The Hague,
The Netherlands



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]