

**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: 25 June 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: 25 June 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
OF GH-145 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-145)”, filed with two annexes on 28 May 2013 (“Motion”). The Prosecution filed its “Corrigendum to Annex A to Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-145)” on 31 May 2013 (“Corrigendum”). The Defence filed its “Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-145)” on 11 June 2013 (“Response”). On 19 June 2013, 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-145)” (“Reply”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-145 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 32 associated exhibits.³ The Prosecution also requests that the Chamber take notice of the revised summary of the evidence of GH-145 submitted with the Motion.⁴

3. In the Response, the Defence objects to the admission of paragraphs 60 to 65 and the sixth sentence of paragraph 32 of the witness statement.⁵ It asserts that the paragraphs relate to matters of sufficient sensitivity and importance that the Chamber should hear the evidence *viva voce* without the influence of leading questions.⁶ The Defence does not raise an objection to the remainder of the proposed Rule 92 *ter* evidence.

4. In the Reply, the Prosecution argues that the Defence’s attempt to carve out “sensitive” information from the witness statement has no basis in the Rules.⁷ Further, citing a previous decision of the Trial Chamber, the Prosecution asserts that the Defence will have the opportunity to

¹ Motion, paras 1, 3-6.

² Motion, paras 1, 7.

³ Corrigendum, Annex A.

⁴ Motion, paras 2, 8, Annex A.

⁵ Response, paras 1-2.

⁶ Response, para. 1.

⁷ Reply, para. 2.

test the witness in relation to the evidence contained in the challenged paragraphs during cross-examination.⁸

B. Applicable Law

5. 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.⁹ 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 written 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

6. GH-145’s proposed evidence, in the form of a written statement, contains information about, *inter alia*, (a) meetings he, as a journalist covering the conflict in Croatia in the latter half of 1991, had with various political and military figures including alleged members of the JCE charged in the Indictment; (b) the takeover of villages by the JNA and Serb militias in the Knin area; and (c) the events surrounding the takeover of Vukovar including the use of heavy weaponry by the JNA on Vukovar, negotiations between the ICRC and JNA, conditions at the Vukovar hospital, and the evacuation of residents from Vukovar. The tendered associated exhibits are discussed in the witness statement and form an inseparable and indispensable part of the evidence. The Trial Chamber finds

⁸ Reply, paras 2-3.

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.

that the tendered evidence is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

7. The challenged portions of the proposed statement relate to a meeting the witness had with Arkan and Goran Hadžić in Belgrade in September 1991 during which Arkan and Hadžić offered the witness exclusive rights to cover the war in Eastern Slavonia in exchange for “non-military material” from the witness’s television network. The witness reported that during the meeting Arkan said that he did not take prisoners. The witness also included his impressions of the relationship between Arkan and Hadžić. The Chamber considers that the evidence is not of such sensitivity and importance that it is inappropriate to be admitted in written form, notes that the Defence will have the opportunity to test the witness in relation to the information contained within these paragraphs during cross-examination, and finds that it is appropriate for admission pursuant to Rule 92 *ter*.

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

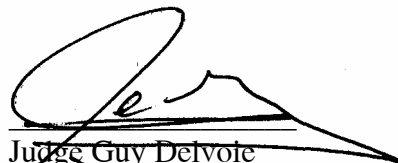
D. Disposition

8. 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-145 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 of GH-145, 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 twenty-fifth day of June 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]