

**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: 3 September 2014
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 3 September 2014

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR ADMISSION OF EVIDENCE OF
DGH-035 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 “Defence Motion for Admission of Evidence of DGH-035 Pursuant to Rule 92 *ter*”, filed publicly with confidential Annexes A and B on 15 July 2014 (“Motion”). The “Consolidated Prosecution Response to Motions for Admission of Evidence of DGH-034, DGH-035, and DGH-036 Pursuant to Rule 92 *ter*” was filed on 29 July 2014 (“Response”). The Defence filed its “Request for Leave to Reply and Reply to Consolidated Prosecution Response to Motions for Admission of Evidence of DGH-034, DGH-035 and DGH-036 Pursuant to Rule 92 *ter*” on 5 August 2014.

A. Submissions

2. In the Motion, the Defence requests the admission of the written statement of DGH-035 pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence (“Rules”) subject to the witness’s in court affirmation.¹ The Defence submits that the witness’s statement contains information relevant to (a) conditions in eastern Slavonia prior to the conflict; (b) the outbreak of fighting and events in Dalj on 1 and 2 August 1991; (c) the formation of the SAO SBWS Government, and Hadžić’s role within it; (d) the JNA’s relationships with the Territorial Defence and the SAO SBWS Government; (e) the witness’s knowledge of certain crimes in the area; (f) the witness’s lack of knowledge regarding government support for Arkan; and (g) the meeting at Velepomet on 20 November 1991.² Additionally, the Defence submits that the admission of DGH-035’s written statement will save court time as the witness’s testimony could not be adduced within the two hours allocated for his examination.³

3. The Prosecution does not object to the admission of the written statement of DGH-035 pursuant to Rule 92 *ter*, subject to compliance with the conditions contained in Rule 92 *ter* when DGH-035 is present in court.⁴ The Prosecution submits that the tendered associated exhibits with Rule 65 *ter* numbers 02508 and 1D02328.1 could be replaced by Rule 65 *ter* number 02508, which covers all three photographs described by the witness in his written statement, and that the tendered associated exhibit with Rule 65 *ter* number 00328 is a duplicate of admitted exhibit P75.50.⁵ The Prosecution does not object to the admission of the remaining tendered associated exhibits.⁶

¹ Motion, paras 1, 8.

² Motion, para. 5.

³ Motion, para. 7.

⁴ Response, para. 3.

⁵ Response, para. 3.

⁶ Response, para. 3.

4. In the Reply, the Defence does not object to the Prosecution's requests that (a) Rule 65 *ter* number 02508 be tendered in lieu of Rule 65 *ter* numbers 02508A and 1D02328; and (b) that P75.50 be tendered in lieu of Rule 65 *ter* 00328.⁷

B. Applicable Law

5. Rule 92 *ter* of the Rules provides:

(A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:

- (i) the witness is present in court;
- (ii) the witness is available for cross-examination and any questioning by the Judges; and
- (iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

(B) Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.

6. The main objective of Rule 92 *ter* of the Rules is to ensure an effective and expeditious trial in accordance with the rights of the accused.⁸ The jurisprudence of the Tribunal has also 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.⁹ 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.¹⁰ 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) of the Rules—the proposed evidence must be relevant and have probative value.¹¹

⁷ Reply, para. 3.

⁸ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on the Application of Rule 92 *ter* of the Rules, 3 July 2007, p. 2; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Motion to Convert *Viva Voce* Witnesses to Rule 92 *ter* Witnesses, 31 May 2007, p. 2.

⁹ *Prosecutor v. Đorđević*, Case No. IT-05-87/1-T, Decision on Vlastimir Đorđević's Motions for Admission of Evidence Pursuant to ICTY Rule 92*ter*, 22 January 2010 ("Đorđević Decision"), para. 7; *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. 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 ("Stanišić and Simatović Decision"), para. 19.

¹⁰ *Đorđević Decision*, para. 7; *Lukić and Lukić Decision*, para. 15; *Stanišić and Simatović Decision*, para. 19.

¹¹ *Đorđević Decision*, para. 5; *Lukić and Lukić Decision*, paras 15-16.

C. Discussion

7. DGH-035's proposed evidence, in the form of a written statement, contains information about, *inter alia*, (a) historical and political developments in eastern Slavonia in 1990 and 1991, including the formation of the SAO SBWS Government;¹² (b) the attack on Dalj at the beginning of August 1991 and events thereafter;¹³ (c) meetings of the SAO SBWS Government, including the meeting at Velepomet on 20 November 1991;¹⁴ and (d) interactions between alleged members of the alleged JCE, including Goran Hadžić.¹⁵ The tendered associated exhibits—including Rule 65 *ter* number 02508 in place of Rule 65 *ter* numbers 1D02328.1 and 02508A—are discussed in DGH-035's written statement and form an inseparable and indispensable part of the evidence. However, Rule 65 *ter* number 00328 is a duplicate of an exhibit (P75.50) already admitted in this case and will not be admitted. The Trial Chamber considers that the proposed evidence is appropriate to be admitted in written form and finds that the tendered evidence is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

¹² Rule 65 *ter* 1D02328, paras 9-23.

¹³ Rule 65 *ter* 1D02328, paras 17, 25, 28-34, 39-44.

¹⁴ Rule 65 *ter* 1D02328, paras 22, 37, 46-51, 56-59.

¹⁵ Rule 65 *ter* 1D02328, paras 23, 37-38, 47, 50, 61-65.


D. Disposition

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

- (a) **DECIDES** that the evidence of DGH-035 is appropriate for admission into evidence; and
- (b) **INFORMS** the parties that the Trial Chamber will make a final decision on whether to admit the evidence of DGH-035, 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 third day of September 2014,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]