

**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: 11 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: 11 September 2014

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR ADMISSION OF EVIDENCE OF
DGH-005 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-005 Pursuant to Rule 92 *ter*” filed confidentially with a confidential annex on 25 August 2014 (“Motion”). The Prosecution confidentially filed the “Prosecution Response to Motion for Admission of Evidence of DGH-005 Pursuant to Rule 92 *ter*” on 8 September 2014 (“Response”).

A. Submissions

2. In the Motion, the Defence requests the admission of the written statement of DGH-005 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 DGH-005’s written statement is relevant, probative, and that its admission under Rule 92 *ter* of the Rules will promote “the expeditious conduct of proceedings”.² The Defence submits that the witness’s statement contains information relevant to (a) the *Zadruga* building in Dalj, including the arrival of a group of detainees and Arkan beating prisoners; (b) the Dalj TO and its commander; (c) the formation of the police; and (d) the function of Željko Čizmić and Milorad Stričević.³ The Defence further submits that DGH-005’s evidence could not be adduced within the one hour allocated for his examination without the admission of the witness’s statement.⁴

3. The Prosecution responds that it does not object to the admission of the statement of DGH-005 pursuant to Rule 92 *ter* of the Rules, subject to compliance with the conditions contained in this Rule when DGH-005 is present in court.⁵

B. Applicable Law

4. 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

¹ Motion, paras 1, 8.

² Motion, paras 5-7.

³ Motion, para. 5.

⁴ Motion, para. 7.

⁵ Response.

(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.

5. 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.⁶ 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.⁷ 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.⁸ 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.⁹

C. Discussion

6. DGH-005's proposed evidence, in the form of a written statement, contains information about, *inter alia*, (a) alleged detention facilities in Dalj, including the “local commune building” and the “cooperative building”;¹⁰ (b) the events surrounding the arrival of a group of detainees at the local commune building, which included Luka Šutalo and Slavko Palinkaš, and the subsequent release of these two men;¹¹ (c) the command and offices of the Dalj TO and Dalj police;¹² and (d) an incident involving Milorad Stričević and Arkan at the Dalj cooperative building.¹³ The Trial Chamber notes that the Prosecution does not oppose admission of this evidence pursuant to Rule 92 *ter* of the Rules. The 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* of the Rules.

⁶ *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.

⁷ *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.

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

⁹ *Đorđević Decision*, para. 5; *Lukić and Lukić Decision*, paras 15-16.

¹⁰ Rule 65 *ter* 1D03029, Witness Statement of DGH-005, paras 9-16, 28-31.

¹¹ Rule 65 *ter* 1D03029, Witness Statement of DGH-005, paras 17-25.

¹² Rule 65 *ter* 1D03029, Witness Statement of DGH-005, paras 8-10, 20-21, 26-28.

¹³ Rule 65 *ter* 1D03029, Witness Statement of DGH-005, paras 33-43.


D. Disposition

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

- (a) **DECIDES** that DGH-005's written statement, Rule 65 *ter* number 1D03029, is appropriate for admission into evidence; and
- (b) **INFORMS** the parties that the Trial Chamber will make a final decision on whether to admit DGH-005's written statement, if the conditions set forth in Rule 92 *ter* of the Rules have been fulfilled, when the witness gives evidence in these proceedings.

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

Done this eleventh day of September 2014,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]