

**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: 4 February 2015
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 4 February 2015

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON RENEWED DEFENCE MOTION FOR ADMISSION OF
EVIDENCE PURSUANT TO RULE 92 *TER* (DGH-113)**

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 hereby seised of the “Renewed Defence Motion for Admission of Evidence Pursuant to Rule 92 *ter* (DGH-113)”, filed confidentially with confidential annexes on 16 January 2015 (“Renewed Motion”). On 30 January 2015, the Defence confidentially filed the “Addendum to Renewed Defence Motion for Admission of Evidence Pursuant to Rule 92 *ter* (DGH-113)” (“Addendum”). The Prosecution elected not to file a response.¹

A. Procedural History and Submissions

2. On 25 August 2014, the “Defence Motion for Admission of Evidence of DGH-113 Pursuant to Rule 92 *ter*” was filed confidentially with confidential annexes (“First Motion”). In the First Motion, the Defence requested the admission of the written statement of DGH-113, with associated exhibits, pursuant to Rule 92 *ter* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).² In its “Decision on Defence Motion for Admission of Evidence of DGH-113 Pursuant to Rule 92 *ter*”, issued confidentially on 2 December 2014 (“Decision”), the Chamber found that the tendered associated exhibits formed an inseparable and indispensable part of DGH-113’s written evidence and that DGH-113’s written statement was relevant.³ However, the Chamber was not satisfied that the tendered written statement contained an accurate reflection of what DGH-113 would say if examined in these proceedings.⁴ Specifically, the Chamber noted that the statement, which was a compilation of portions of DGH-113’s prior testimony, (a) had not been understood, reviewed, and affirmed by the witness in its entirety;⁵ and (b) was unclear and contained information that was no longer correct.⁶ Accordingly, the Chamber denied the First Motion without prejudice.⁷

3. In the Renewed Motion, the Defence submits a “corrected statement, which is essentially identical to the previous statement,” that addresses the deficiencies identified by the Chamber in the Decision.⁸ The Defence notes that (a) the statement has been reviewed to identify any manifest

¹ Email to the Trial Chamber and the Defence, 20 January 2015.

² First Motion, paras 1, 8. *See also* Notice of Addendum to the Defence Motion for Admission of Evidence of DGH-113 Pursuant to Rule 92 *ter* (confidential), 4 September 2014; Prosecution Response to Defence Motion for Admission of Evidence of DGH-113 Pursuant to Rule 92 *ter* (confidential), 8 September 2014; Reply to Prosecution Response to Defence Motion for Admission of Evidence of DGH-113 Pursuant to Rule 92 *ter* (confidential), 15 September 2014; Addendum to Defence Motion for Admission of Evidence of DGH-113 Pursuant to Rule 92 *ter* (confidential), 23 September 2014; Third Addendum to Defence Motion for Admission of Evidence of DGH-113 Pursuant to Rule 92 *ter* (confidential), 1 October 2014.

³ Decision, para. 16.

⁴ Decision, para. 20.

⁵ Decision, para. 18.

⁶ Decision, para. 19.

⁷ Decision, para. 22.

⁸ Renewed Motion, paras 1, 5.

inaccuracies;⁹ and (b) the “witness has now had the opportunity to read the entire statement in his own language and, on this basis, has unequivocally affirmed that the ‘statement is true and accurate to the best of my recollection.’”¹⁰ The Defence asserts that the statement is relevant¹¹ and sufficiently reliable,¹² and requests admission of the statement, with associated exhibits,¹³ pursuant to Rule 92 *ter* of the Rules, subject to the witness’s in court affirmation.¹⁴

4. On 20 January 2015, the Prosecution indicated via email that it takes no position on the Renewed Motion.

5. In the Addendum, the Defence indicates that the documents with Rule 65 *ter* numbers 1D03757 and 1D03758 were inadvertently omitted from the list of associated exhibits attached to the Renewed Motion.¹⁵

B. Applicable Law

6. 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.

7. 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.¹⁶ 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

⁹ Renewed Motion, para. 9.

¹⁰ Renewed Motion, para. 8.

¹¹ Renewed Motion, para. 5.

¹² Renewed Motion, paras 6-11.

¹³ See Renewed Motion, confidential Annex B.

¹⁴ Renewed Motion, paras 1, 12.

¹⁵ Addendum, para. 1.

¹⁶ *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.

evidence.¹⁷ 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.¹⁸ 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.¹⁹

C. Discussion

8. The Chamber notes that the written statement of DGH-113 submitted as part of the Renewed Motion is a corrected version of the written statement submitted with the First Motion and contains substantially the same information. The Chamber will therefore rely on its previous finding that the written evidence of DGH-113 is relevant.²⁰

9. The tendered associated exhibits listed in confidential Annex B of the Renewed Motion and in the Addendum, as referenced in the written statement, form an inseparable and indispensable part of DGH-113's evidence. The Chamber notes that the following documents have already been admitted as exhibits: P1763, D10, P2206.2168, and P2258.2168.

10. The witness has now had the opportunity to read the statement in its entirety in a language he understands and has affirmed that it is true and accurate to the best of his recollection.²¹ The Chamber is, therefore, satisfied, that the statement contains an accurate reflection of what DGH-113 would say if examined in these proceedings. The Chamber finds that the proposed evidence is appropriate for admission pursuant to Rules 89(C) and 92 *ter* of the Rules.

¹⁷ *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.

⁹ *Đorđević Decision*, para. 7; *Lukić and Lukić Decision*, para. 15; *Stanišić and Simatović Decision*, para. 19.

¹⁹ *Đorđević Decision*, para. 5; *Lukić and Lukić Decision*, paras 15-16.

²⁰ *See Decision*, para. 16.

²¹ Rule 65 *ter* number 1D03842, p. 42.

D. Disposition

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

- a) **DECIDES** that the written statement of DGH-113, Rule 65 *ter* number 1D03842 (under seal), and its associated exhibits—1D03582 (under seal), 1D03720 (under seal), 1D02393 (under seal), 1D03721 (under seal), 1D03722 (under seal), 01116 (under seal), 1D03771 (under seal), 1D03738 (under seal), 1D03757, and 1D03758—are appropriate for admission into evidence;
- b) **ORDERS** the Defence—by no later than 12 February 2015—to (i) upload to eCourt a public redacted version of Rule 65 *ter* number 1D03842 and (ii) notify, via a written filing, the Trial Chamber, Prosecution, and Registry that this has been completed; and
- c) **INFORMS** the parties that the Trial Chamber will make a final decision on whether to admit the evidence of DGH-113, 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 fourth day of February 2015,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]