

**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: 15 October 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: 15 October 2014

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR ADMISSION OF
EVIDENCE OF DGH-015 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 hereby seised of the “Defence Motion for Admission of Evidence of Vitimir Devetak (DGH-015) Pursuant to Rule 92 *ter*”, filed with a confidential annex on 13 August 2014 (“Motion”). The “Prosecution Response to Motion for Admission of Evidence of Vitimir Devetak (DGH-015) Pursuant to Rule 92 *ter*” was filed on 26 August 2014 (“Response”). On 3 September 2014, the Defence filed a “Reply to Prosecution Response to Motion for Admission of Evidence of Vitimir Devetak (DGH-015) Pursuant to Rule 92 *ter*” (“Reply”).

A. Submissions

2. In the Motion, the Defence requests the admission of DGH-015’s written statement, Rule 65 *ter* number 1D03639, 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-015’s written statement is relevant and probative.² In this respect, the Defence highlights the witness’s roles as Minister for War Economy in the SBWS Government and as an assistant minister of trade in the RSK, and refers to descriptions in the statement of: (a) the rising ethnic tensions in Borovo Selo and surrounding areas including the 2 May 1991 clash; (b) the SBWS Government’s structure, meetings, competencies, and relationship with the JNA; (c) the JNA’s control over Ilok and surrounding areas; (d) Radovan Stojičić’s (“Badža”) presence and role in Eastern Slavonia; (e) DGH-015’s knowledge of Arkan; (f) events at Borovo School on the night of 19 November 1991, including DGH-015’s evidence that he did not see Goran Hadžić; (g) the purpose and nature of the 20 November 1991 Velepromet meeting (“Velepromet Meeting”); (h) DGH-015’s knowledge of the SNB and of any relationship between the SBWS Government and the Government of Serbia; and (i) DGH-015’s experience and function as an assistant minister in the RSK.³ Finally, the Defence argues that admitting DGH-015’s statement under Rule 92 *ter* of the Rules will promote the expeditious conduct of the proceedings as the statement’s content could not otherwise be adduced within the two hours currently allotted for its examination of the witness.⁴

3. The Prosecution objects in part to the admission of DGH-015’s witness statement pursuant to Rule 92 *ter* of the Rules.⁵ It argues that paragraphs 22, 23, and 31 are inappropriate for admission pursuant to Rule 92 *ter* of the Rules and should be excised from the statement as they address

¹ Motion, paras 1, 9.

² Motion, paras 5-6.

³ Motion, para. 5.

⁴ Motion, para. 7.

⁵ Response, para. 1.

important issues in the trial.⁶ The Prosecution refers to the Chamber’s order to excise paragraphs of a Rule 92 *ter* statement, tendered by the Prosecution during its case, which concerned the Velepromet Meeting and asserts that paragraphs 22 and 23 concern the same meeting.⁷ The Prosecution argues that paragraph 31 contains sweeping assertions concerning the powers of Goran Hadžić and the SBWS Government.⁸ The Prosecution contends that evidence on these matters should be led *viva voce* rather than admitted in a written statement—emphasising that DGH-015 has not testified before the Tribunal and that there is no record of the questions asked and answered in the interview that generated this statement.⁹

4. In the Reply, the Defence seeks leave to reply and replies to the Response.¹⁰ The Defence counters that DGH-015 is one of at least five Defence witnesses, including two *viva voce* witnesses, who will provide evidence about the Velepromet Meeting, whereas GH-028 “was one of the few—if not the only—Prosecution witness to provide direct testimony” about this meeting.¹¹ With regard to the Prosecution’s submission that the statement contains sweeping assertions, the Defence counters that the Prosecution’s complaint can be addressed through cross-examination.¹² Finally, the Defence submits that the absence of any record of questions and answers does not appear to have ever been considered by this Chamber to be a factor against the admission of a statement pursuant to Rule 92 *ter* of the Rules.¹³

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 Response, para. 1.

⁷ Response, para. 1, *referring to* Decision on Prosecution Motion for Admission of Evidence of GH-028 Pursuant to Rule 92 *ter*, 16 April 2013 (confidential).

⁸ Response, para. 1.

⁹ Response, para. 1.

¹⁰ Reply, para. 1.

¹¹ Reply, para. 2.

¹² Reply, para. 3.

¹³ Reply, para. 3.

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.¹⁴ 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.¹⁵ 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.¹⁶ 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.¹⁷

C. Discussion

7. DGH-015’s proposed evidence, in the form of a written statement, contains information about, *inter alia*: (a) rising ethnic tensions and clashes in Borovo Selo between 1990 and 1991;¹⁸ (b) the historical and political developments, including the structure, meetings and competencies of the SBWS Government between 1991 and 1992;¹⁹ (c) the Velepromet Meeting;²⁰ and (d) the JNA’s actions in Dalj and Borovo Selo.²¹

8. Considering the potential importance of the Velepromet Meeting, the varying accounts of the meeting by those in attendance, and the Trial Chamber’s decision to redact similar information during the Prosecution’s case, the Trial Chamber finds that it would be in the interests of justice for the evidence in paragraphs 22 and 23 of DGH-015’s statement to be led *viva voce*. The Trial Chamber is, however, not persuaded that the evidence in paragraph 31 of DGH-015’s statement must be led *viva voce* as the Prosecution will have ample opportunity to challenge DGH-015’s evidence on these more general topics during cross-examination. The Trial Chamber further reiterates that neither the lack of a record of the questions asked and answered during the interview,

¹⁴ *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.

¹⁵ *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.

¹⁶ *Đorđević* Decision, para. 7; *Lukić and Lukić* Decision, para. 15; *Stanišić and Simatović* Decision, para. 19.

¹⁷ *Đorđević* Decision, para. 5; *Lukić and Lukić* Decision, paras 15-16.

¹⁸ Rule 65 *ter* number 1D03639, paras 2-11.

¹⁹ Rule 65 *ter* number 1D03639, paras 12-19, 27- 29, 31.

²⁰ Rule 65 *ter* number 1D03639, paras 22-23.

²¹ Rule 65 *ter* number 1D03639, paras 19, 24-25.

nor the fact that the witness has not previously testified before the Tribunal are alone sufficient require that DGH-015's evidence be led *viva voce*.²²

9. Accordingly, the Trial Chamber considers that DGH-015's statement, exclusive of paragraphs 22 and 23, is appropriate to be admitted in written form and finds that the tendered statement is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter* of the Rules.


D. Disposition

10. Accordingly, the Trial Chamber, pursuant to Rules 54, 89(C), 92 *ter*, and 126 *bis* of the Rules, hereby:

- a) **GRANTS** the Defence leave to file the Reply;
- b) **ORDERS** the Defence—by no later than 23 October 2014— (i) to remove paragraphs 22 and 23 from Rule 65 *ter* number 1D03639; (ii) to upload the new version of Rule 65 *ter* number 1D03639, exclusive of paragraphs 22 and 23, to eCourt; and (iii) to notify via a written filing, the Trial Chamber, Prosecution, and Registry that this has been completed;
- c) **DECIDES** that DGH-015's statement, Rule 65 *ter* number 1D03639, exclusive of paragraphs 22 and 23, is appropriate for admission into evidence; and
- d) **INFORMS** the parties that the Trial Chamber will make a final decision on whether to admit DGH-015'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 fifteenth day of October 2014,
At The Hague,
The Netherlands.


 Judge Guy Delvoie
 Presiding

[Seal of the Tribunal]

²² See Decision on Defence Motion for Admission of Evidence of DGH-010 pursuant to Rule 92 *ter*, 11 September 2014, para. 13; Decision on Defence Motion for Admission of Evidence of DGH-099 pursuant to Rule 92 *ter*, 8 September 2014 (confidential), para. 14.