

**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: 2 November 2012
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 2 November 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
OF GH-016 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 “Prosecution Motion for Admission of Evidence of GH-016 Pursuant to Rule 92 *ter*”, filed confidentially with confidential annexes on 8 October 2012 (“Motion”). The Defence confidentially filed its “Response to Prosecution Motion for Admission of Evidence of GH-016 Pursuant to Rule 92 *ter*” on 22 October 2012 (“Response”). The Prosecution confidentially filed its “Prosecution Request for Leave to Reply and Reply to Response to Prosecution Motion for Admission of Evidence of GH-016 Pursuant to Rule 92 *ter*” on 25 October 2012 (“Reply”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of evidence of GH-016 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 In accordance with the protective measures in effect for GH-016, the Prosecution requests that the Rule 92 *ter* statement be admitted under seal.³ The Prosecution further requests the admission of 50 associated exhibits that, in its view, form an integral and inseparable part of GH-016’s tendered Rule 92 *ter* statement.⁴ The Prosecution requests that 26 of these associated exhibits be admitted under seal.⁵

3. In the Response, the Defence objects to the admission of GH-016’s written evidence pursuant to Rule 92 *ter*, submitting that the witness’s testimony is too vital to the Prosecution case to be led in any manner other than *viva voce*.⁶ The Defence submits that the complexity, length, incriminatory allegations central to the Indictment, and the inconsistencies concerning Hadžić contained in GH-016’s written evidence warrant *viva voce* examination.⁷ The Defence submits that the prejudicial effect to Hadžić of associated exhibits with Rule 65 *ter* numbers 04811 and 04802 exceed their probative value, arguing that GH-016 identifies only a small portion of these two relatively lengthy video exhibits and thereby objects to the admission of this evidence.⁸ The

¹ Motion, paras 1, 4-5, 7, 14.

² Motion, paras 1, 11.

³ Motion, para. 13.

⁴ Motion, paras 2-3, 12-13.

⁵ Motion, para. 13.

⁶ Response, paras 1, 3.

⁷ Response, paras 2-3.

⁸ Response, para. 4 (Rule 65 *ter* 04811 and 04802 are both video exhibits).

Defence additionally submits that associated exhibit with Rule 65 *ter* number 00841 should be denied admission as irrelevant to the present case.⁹

4. In the Reply, the Prosecution rejects the Defence allegations of the witness's inconsistent statements pertaining to Hadžić.¹⁰ The Prosecution further submits that it will only seek to tender the relevant segments of these video exhibits into evidence, *i.e.*, only minutes 10:23 to 13:50 of exhibit 04802 and minutes 50:55 to 55:22 of exhibit 04811 after the completion of GH-016's testimony.¹¹

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. The jurisprudence of the Tribunal has applied the Rule as permitting, by necessary inference,¹² the admission of exhibits where they accompany written statements or transcripts and form an “inseparable and indispensable” part of the evidence.¹³ 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.¹⁴ 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.¹⁵

⁹ Response, para. 5.

¹⁰ Reply, paras 2-3.

¹¹ Reply, para. 4.

¹² *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.

¹³ *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.

¹⁴ *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.

¹⁵ *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

C. Discussion

6. GH-016's proposed Rule 92 *ter* statement contains evidence about, *inter alia*, (a) the witness's interactions with Hadžić and alleged members of the alleged joint criminal enterprise ("JCE") in this case; (b) alleged interactions between Hadžić and alleged members of the alleged JCE; (c) the political formation and structure of the SAO SBWS and RSK governments; and (d) the presence of the Serbian MUP in SAO SWBS from 1991. The Trial Chamber finds that the information in the witness's statement is appropriate for admission pursuant to Rule 92 *ter* and that it is not necessary for the evidence to be led *viva voce*. In relation to the Defence's argument that there are inconsistencies in the statement in relation to Hadžić, the Trial Chamber considers that the Defence will have the opportunity to address these alleged inconsistencies during cross-examination. The Chamber notes that the Prosecution, in its Reply, clarifies that it will only tender relevant segments of the impugned associated video exhibits.¹⁶ The Chamber considers that proposed exhibit 00841 forms an integral and inseparable part of the tendered Rule 92 *ter* statement. The Trial Chamber finds that the evidence is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

D. Disposition

7. 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-016 is appropriate for admission into evidence; and

¹⁶ Rule 65 *ter* numbers 04811 and 04802.

- (c) **INFORMS** the parties that the Trial Chamber will make a final decision on whether to admit the evidence, 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 second day of November 2012,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]