

**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: 17 May 2013
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 17 May 2013

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON URGENT DEFENCE MOTION
TO PRECLUDE GH-162's APPEARANCE UNTIL AFTER DISCLOSURE OF
A PROPER WITNESS STATEMENT**

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 “Urgent Motion to Preclude GH-162’s Appearance Until After Disclosure of a Proper Witness Statement”, filed by the Defence on 15 May 2013 (“Motion”). On 16 May 2013, the Prosecution filed the “Prosecution Response to Urgent Motion to Preclude GH-162’s Appearance Until After Disclosure of a Proper Witness Statement” (“Response”). On 16 May 2013, the Defence filed the “Reply in Respect of Urgent Motion to Preclude GH-162’s Appearance Until After Disclosure of a Proper Witness Statement” (“Reply”). On 16 May 2013, the Prosecution made an oral request to sur-reply, which was denied orally by the Chamber.¹

2. Witness GH-162 is a *viva voce* witness in this case, scheduled to testify in the week of 20 May 2013.

3. In the Motion, the Defence seeks to preclude witness GH-162’s appearance as a witness until 30 days after a “proper” witness statement has been disclosed to the Defence by the Prosecution.² The Defence avers that the document disclosed in connection with this witness is not reliable, does not give notice to the Defence of the expected testimony of the witness, and constitutes a violation of the Prosecution’s disclosure obligations under Rule 65 *ter*.³ The Defence also argues that the Prosecution had a duty to take a proper witness statement from the witness and to disclose any notes taken by investigators or lawyers after interviewing the witness.⁴

4. The Prosecution responds that it has fully complied with its obligations under Rule 65 *ter* with respect to the witness, that the only known statement that exists for the witness is the one at issue in the Motion, and that this statement was properly disclosed to the Defence under Rule 66(A)(ii).⁵ The Prosecution also submits that there is no requirement that a statement of a witness who is to testify *viva voce* be taken by the Prosecution.⁶ Finally, the Prosecution argues that the Defence has been put on adequate notice of the forthcoming evidence of the witness via the Rule 65 *ter* witness summary and the disclosed prior statement of the witness.⁷

5. The Defence replies that, based on the nature of and the method by which the disclosed statement was compiled, the Prosecution cannot assert that the statement records GH-162’s

¹ Oral Ruling, 16 May 2013, T. 4884-4885.

² Motion, paras 1-2.

³ Motion, para. 1. See document designated with Rule 65 *ter* number 05970.

⁴ Motion, para. 2.

⁵ Response, para. 4.

⁶ Response, para. 6.

⁷ Response, paras 2, 5. See document designated with Rule 65 *ter* number 05970.

knowledge of the alleged crimes mentioned therein with any reliability, nor can it attest to its accuracy.⁸

6. The Trial Chamber observes that there is no requirement for a party to take a statement from a witness who is to testify *viva voce*. When a statement of such a witness does exist and is in the possession of that party—be it a statement taken by the ICTY Prosecution or a third-party—then that statement must be disclosed to the opposing party pursuant to the Tribunal’s Rules. In the instant case, the witness is to testify *viva voce* before the Chamber; there was therefore no obligation for the Prosecution to take a statement from him. The statement that was within the possession of the Prosecution was disclosed to the Defence in a timely manner. Moreover, the Defence was put on notice of the expected testimony of the witness via the Rule 65 *ter* summary. Therefore, the Trial Chamber does not find that there has been a disclosure violation.

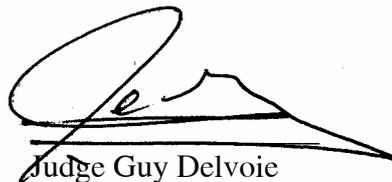
7. Based on the foregoing and pursuant to Rules 54, 65 *ter*, 66, and 126 *bis* of the Rules, the Trial Chamber, hereby

(a) **GRANTS** the Defence leave to file the Reply; and

(b) **DENIES** the Motion.

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

Done this seventeenth day of May 2013,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]

⁸ Reply, para. 4.