



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-95-5/18-T

Date: 22 July 2010

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 22 July 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR TESTIMONY TO BE HEARD
VIA VIDEO-CONFERENCE LINK**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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’s Motion for Video-Conference Link for the Testimony of Witness KDZ476”, filed on 9 July 2010, with Confidential Appendices A and B (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Office of the Prosecutor (“Prosecution”) requests that the testimony of Fahra Mujanović (KDZ476) (“Witness”) be conducted by video-conference link, in accordance with Rule 81 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ Arguing that all the prerequisites for hearing testimony by video-conference link are met in this instance, the Prosecution contends that, due to the state of the Witness’s health, she is prevented from travelling to The Hague to testify in person.² In Confidential Appendix A to the Motion, the Prosecution describes the medical condition of the Witness and provides another explanation as to why the Accused will not be prejudiced by the Witness’s absence. In Confidential Annex B, the Prosecution attaches medical evidence of the Witness’s health condition.

2. The Prosecution asserts that the evidence to be given by the Witness is “sufficiently important to the trial, making it unfair for the Prosecution to proceed without the opportunity to present her evidence”, as she will provide evidence with regard to Scheduled Incident G2, a shelling incident which occurred on 6 June 1992.³ The Prosecution notes that the Witness was a victim of this incident and sustained significant injuries when a mortar hit her house, and that on the way to the hospital to have her injuries treated, the car in which she was being transported was hit by sniper fire.⁴ Moreover, the Prosecution submits that the Accused would not be prejudiced by the use of video-conference link, noting that this Chamber “has already ruled that testimony via video-conference link does not prejudice the rights of the Accused to cross-examine the witness, and allows the Chamber to assess the credibility and reliability of the witness”.⁵

3. On 16 July 2010, the Accused filed publicly the “Response to Video Conference Motion—KDZ476” (“Response”), in which he opposes the Motion. The Accused argues that the doctor’s letter dated 20 April 2010 and contained in Confidential Annex B to the Motion

¹ Motion, paras. 1, 9.

² Motion, paras. 1, 4.

³ Motion, paras. 6–7.

⁴ Motion, para. 7.

“provides an insufficient basis upon which to order testimony by video-conference”, as the letter merely states that travel to The Hague is not recommended “at the moment”.⁶ The Accused asserts that when this letter was written, the Witness’s blood pressure was particularly high, but that upon her discharge from hospital on 13 May 2010, her blood pressure had been significantly reduced.⁷ The Accused argues that because the Witness’s condition has improved since the time the letter was written and because she is unlikely to testify until sometime late this year, the letter is insufficient to establish the need for the Witness’s testimony to be provided by video-conference link.⁸

4. The Accused further argues that he would suffer prejudice if the Witness were not brought to The Hague to testify, as he “could not question the witness as effectively ... because of the loss of ability to read body language, to make eye contact, and to gauge any bias or prejudice that the witness may exhibit upon confronting Dr. Karadžić face to face.”⁹ The Accused points to the jurisprudence of the ICTR Appeals Chamber in the *Zigiranyirazo* case, which overturned a decision of the Trial Chamber to take testimony of a witness in The Hague while the accused would remain in Arusha and observe the proceedings by video-conference link.¹⁰ The Accused also asserts that the “prejudice from the lack of in-person confrontation is even greater when the accused is self-represented and would be confronting the witness directly.”¹¹

II. Applicable Law

5. Rule 81 *bis* of the Rules provides that “[a]t the request of a party or *proprio motu*, a Judge or a Chamber may order, if consistent with the interests of justice, that proceedings be conducted by way of video-conference link”.

6. A witness may give his or her testimony via video-conference link if three criteria are met, namely:

- i. the witness must be unable, or have good reasons to be unwilling, to come to the Tribunal;

⁵ Motion, para. 5 (referring to *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Prosecution’s Motion for Testimony to be Heard Via Video-Conference Link, 17 June 2010, para. 9).

⁶ Response, paras. 4, 2.

⁷ Response, para. 3.

⁸ Response, para. 4.

⁹ Response, para. 5.

¹⁰ Response, para. 6.

¹¹ Response, para. 6.

- ii. the witness's testimony must be sufficiently important to make it unfair to the requesting party to proceed without it; and
- iii. the accused must not be prejudiced in the exercise of his or her right to confront the witness.¹²

7. After having considered these criteria, the Chamber must ultimately determine whether, on the basis of all the relevant considerations, it would be in the interests of justice to grant the request for video-conference link.¹³

8. In cases where a request to hear testimony via video-conference link is granted, the Tribunal has established specific guidelines to ensure the orderly conduct of proceedings.¹⁴

III. Discussion

9. In relation to the first criterion, the Chamber notes that the medical documentation provided by the Prosecution describes the Witness's ongoing health problems which have recently intensified. Although some of the Witness's symptoms improved between the time she was ordered admitted to the hospital and the time she was discharged, the Chamber notes that a series of medications and follow-up check-ups were ordered as part of her ongoing therapy. Given the seriousness and nature of the Witness's health problems, which are unlikely to change significantly over the coming months, the Chamber is satisfied that the Witness is currently unable to travel to the Tribunal to testify.¹⁵

10. In respect of the second criterion, the Chamber notes that in addition to evidence regarding Scheduled Incident G2, a shelling incident that resulted in significant injuries to the Witness, the Witness is expected to give evidence about the general shelling and sniping of Sarajevo in early 1992, including her knowledge of others who were injured and the origin of the shelling from Bosnian Serb positions in places familiar to the Witness. Accordingly, the

¹² *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Prosecution Motions to Hear Witnesses by Video-Conference Link, 25 February 2010 ("Stanišić Decision"), para. 8; *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Reasons for Decision on Prosecution's Renewed Motion for Evidence of Witness 82 to Be Presented via Video-Conference Link from Zagreb and Reasons for Decision on the Request of the Markač Defence to Conduct Cross-Examination in Zagreb, 26 February 2009 ("Gotovina Decision"); *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Popović's Motion Requesting Video-Conference Link Testimony of Two Witnesses, 28 May 2008 ("Popović Decision"), para. 8; para. 17; *Prosecutor v. Delalić and Delić*, Case No. IT-96-21-T, Decision on the Motion to Allow Witnesses K, L and M to Give Their Testimony by Means of Video-Link Conference, 28 May 1997 ("Delalić and Delić Decision"), para. 17; *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link, 25 June 1996, para 19 ("Tadić Decision").

¹³ *Popović Decision*, para. 8; *Stanišić Decision*, para. 8.

¹⁴ See *Tadić Decision*, para. 22.

¹⁵ In the event that the Witness's condition does substantially improve between now and when she is called to testify, such that she is able to travel, the Chamber requests that the Prosecution notify it of this fact so that it can reassess whether the use of video-conference link remains necessary.

Chamber is convinced that the Witness's evidence is sufficiently important that it would be unfair to proceed without it.

11. With regard to the third criterion, the Chamber notes the jurisprudence of this Tribunal to the effect that the use of video-conference link does not violate the rights of the accused to cross-examine the witness or to confront the witness directly.¹⁶ The Chamber also agrees with other Trial Chambers that video-conferences do in fact allow the cross-examining party to observe the witnesses' reactions, and allow the Chamber to assess the credibility and reliability of the testimony in the same manner as for a witness physically present in the courtroom.¹⁷ Accordingly, and bearing in mind the circumstances of the Witness and the nature of her expected evidence, the Chamber is satisfied that the Accused will not suffer prejudice as a consequence of the Witness testifying by video-conference link.¹⁸ The Chamber has already indicated that the Accused's reliance on the *Zigiranyirazo* Decision is misplaced,¹⁹ and is not convinced that a self-represented accused suffers prejudice that is any different from, or greater than, that experienced by accused persons who are represented by counsel.

12. Given that all the criteria for testimony via video-conference link are met, and taking into account the circumstances of the Witness and the nature of her expected testimony, the Chamber is of the view that it is in the interests of justice to grant the request for video-conference link.

¹⁶ *Stanišić* Decision, para. 9; *Gotovina* Decision, para. 18; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion for Testimony of K74 to Be Heard Via Video-Link Conference, 16 November 2006, para. 2; *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-T, Decision on Prosecution Motion for Receiving Testimony by Video-Conference Link, 11 March 2004, p. 4; *Delalić and Delić* Decision, para. 15.

¹⁷ *See, e.g.*, *Stanišić* Decision, para. 9; *Gotovina* Decision, para. 18.

¹⁸ *See also* *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Prosecution's Motion for Testimony to be Heard Via Video-Conference Link, 17 June 2010, para. 9.

¹⁹ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Prosecution's Motion for Testimony to be Heard Via Video-Conference Link, 17 June 2010, paras. 9–10.

IV. Disposition

13. Accordingly, the Trial Chamber, pursuant to Rules 54 and 81 *bis* of the Rules, hereby **GRANTS** the Motion and **REQUESTS** the Registry to take all necessary measures to implement the terms of this Decision.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-second day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]