



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: 21 November 2012

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: 21 November 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR VIDEO LINK TESTIMONY FOR
WITNESSES JANKO IVANOVIĆ AND ILIJA MIŠČEVIĆ**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Appointed 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 Accused’s “Motion for Video Link for Witnesses Janko Ivanović (KW174) and Ilija Mišćević (KW333)”, filed publicly with confidential annexes on 12 November 2012 (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Accused requests that the testimony of witnesses Janko Ivanović and Ilija Mišćević be conducted by video link on 17 January 2013 pursuant to Rule 81 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ The Accused attaches, in confidential annexes to the Motion, written requests by each witness to testify via video link and medical documentation in support. The Accused states that both witnesses are “unable and unwilling to come to the Tribunal” due to health problems.² In confidential annex A (“Annex A”), Ivanović states that he is unable to travel to The Hague due to health concerns arising from a surgery he underwent three years ago, and that he anticipates having a second surgery soon.³ In confidential annex B (“Annex B”), Mišćević states that he is unable to travel to The Hague to testify because of his “poor health” following surgery.⁴ Additionally, Mišćević expresses concern about how the change in climate and place would affect his condition⁵ The Accused notes that Mišćević will “require the use of a device known as a laryngophone to be able to speak audibly during his testimony”.⁶

2. On 14 November 2012, the Prosecution filed the “Prosecution Response to Karadžić’s Motion for Video-Link for Witnesses Janko Ivanović and Ilija Mišćević” (“Response”), in which it does not oppose the Motion.⁷ The Prosecution notes, however, that the medical documentation provided in Annex B is “outdated and does not include any information concerning the witness’s ability to travel at present”.⁸

¹ Motion, para. 1.

² Motion, para. 5.

³ Annex A, p. 3.

⁴ Annex B, p. 1.

⁵ Annex B, p. 1.

⁶ Motion, para. 5, fn. 4.

II. Applicable Law

3. 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”.

4. The Chamber has previously outlined the criteria it considers when assessing whether to allow testimony via video link, namely:

- i. the witness must be unable, or have good reasons to be unwilling, to come to the Tribunal;
- 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.⁹

5. If these criteria are satisfied, then the Chamber must “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”.¹⁰

III. Discussion

A. Witness Janko Ivanović

6. In considering the first criterion for determining the appropriateness of hearing evidence by video link, the Chamber has reviewed the information provided by the Accused regarding Ivanović’s physical condition and his ability to travel to the Tribunal to testify. Having considered the witness’s age and his extended recovery from surgery, the Chamber is satisfied that he is unable to come to the Tribunal.

7. With regard to the second criterion, the Chamber has reviewed Ivanović’s statement and its relevance to Counts 9–10 and Scheduled Incident G10 of the Indictment.¹¹ The Chamber

⁷ Response, p. 1.

⁸ Response, p. 1.

⁹ See Decision on Video-Conference Link and Request for Protective Measures for KDZ595, 18 August 2010 (“KDZ595 Decision”), para. 6; Decision on Prosecution’s Motion for Testimony to be Heard via Video-Conference Link, 17 June 2010, para. 5.

¹⁰ KDZ595 Decision, para. 7 citing *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, para. 8 and *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, para. 8.

finds that the anticipated testimony regarding the location of Bosnian Muslim military targets within Hrasnica is sufficiently important and that it would be unfair to proceed without it. However, the Chamber notes that paragraphs 4 and 5 of Ivanović's statement are not relevant to these proceedings and shall therefore be removed from the statement prior to it being tendered pursuant to Rule 92 *ter*.

B. Witness Ilija Mišćević

8. Having considered Mišćević's age, seemingly continuing poor health, and his concern about how the change in climate and place would affect his condition, the Chamber is satisfied that the witness is unable to come to the Tribunal. The Chamber notes, however, that Annex B includes medical documentation which is very outdated. In the future, when requesting video link testimony, the Chamber instructs the Accused to provide contemporaneous medical documentation that specifically addresses the reasons why the witness is currently unable to travel to The Hague.

9. Having reviewed Mišćević's statement and its relevance to Counts 9–10 and Scheduled Incident G10 of the Indictment, the Chamber finds that his anticipated testimony regarding the location of Bosnian Muslim military targets in Hrasnica is sufficiently important and that it would be unfair to proceed without it.¹² However, the Chamber notes that paragraphs 5, 7, 13, and 14 of Mišćević's statement are not relevant to these proceedings and shall therefore be removed from the statement prior to it being tendered pursuant to Rule 92 *ter*.

10. Finally, the Chamber recalls that video link testimony allows parties to observe the witnesses' reactions, and also allows the Chamber to assess the credibility of the witnesses and the reliability of their testimony in the same manner as for witnesses who are physically present in the courtroom.¹³ Accordingly, the Chamber finds that it is in the interests of justice to grant the request for video link testimony for Janko Ivanović and Ilija Mišćević.

¹¹ The Witness's statement is available on e-court as 65 *ter* 1D05591.

¹² The Witness's statement is available on e-court as 65 *ter* 1D05590.

¹³ KDZ595 Decision, para. 12; Decision on Prosecution Motion for Video-Conference Link for Testimony of Witness KDZ084, 1 December 2011, para. 10; Decision on Prosecution's Motion for Testimony to be Heard via Video-Conference Link, 22 July 2010, para. 11.

IV. Disposition

11. For these reasons, pursuant to Rules 54 and 81 *bis* of the Rules, the Chamber hereby

i. **GRANTS** the Motion, and

ii. **INSTRUCTS** the Registry to take all necessary measures to implement this Decision.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-first day of November 2012
At The Hague
The Netherlands

[Seal of the Tribunal]