



ICTR-01-73-T

12-5-2006

(4954-4951)

Office of the President
Cabinet du Président

Original: English

Before: Judge Erik Møse, President

Registrar: Adama Dieng

Date: 12 May 2006

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. : ICTR-01-73-T

JUDICIAL ARCHIVES

ICTR

Stephane

12 MAY 12 P 1:34

**DECISION ON REQUEST FOR AUTHORISATION TO HOLD TRIAL SESSION
AWAY FROM THE SEAT OF THE TRIBUNAL**

Office of the Prosecutor

Stephen Rapp
Wallace Kapaya
Gina Butler
Charity Kagwi-Ndungu
Iskandar Ismail
Jane Mukangira

Defence counsel

John Philpot
Peter Zasuk

6m

THE PRESIDENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,

BEING SEIZED OF a request by Trial Chamber III, in its "Decision on Defence and Prosecution Motions Related to Witness ADE" of 31 January 2006, to authorize the Chamber to sit in The Hague in order to hear the testimony of this witness;

CONSIDERING the Registrar's submissions pursuant Rule 33 (B) of the Rules of Procedure and Evidence ("the Rules"), filed on 17 February 2006, as well as the Trial Chamber's memorandum of 21 February 2006;

NOTING the Registrar's further submissions pursuant to Rule 33 (B), filed on 24 April 2006;

HEREBY DECIDES THE REQUEST.

INTRODUCTION

1. On 31 January 2006, the Trial Chamber denied the Prosecution request that the testimony of Witness ADE be given via video-link, finding it to be in the interests of justice to instead order that all necessary arrangements be made for the testimony of this witness to be heard in The Hague, with all parties present. The Chamber consequently requested the President, pursuant to Rule 4 of the Rules, to authorize the Chamber to sit in The Hague, at a date to be determined in consultation with the Parties and the Registry, in order to hear the testimony of the witness.¹

2. In submissions of 17 February 2006 to the President, the ICTR Registrar indicated that the Registrar of the International Criminal Tribunal for the former Yugoslavia ("ICTY") had advised that that Tribunal would be unable to accommodate this request due to a lack of courtroom capacity there. The ICTR Registrar also submitted that initial estimates of costs associated with a hearing in The Hague would be prohibitive and involve budgetary problems for the ICTR.

3. Thereafter, the Registry seized the Registrar of the International Criminal Court ("ICC") with a request for the use of a courtroom and related facilities there. The ICC Registrar subsequently agreed to place a courtroom and detention facilities at the disposal of the Tribunal for a period of five days between 5 June and 9 June 2006 for the purposes of hearing the testimony of Witness ADE, on a cost-reimbursement basis. In his submissions of 24 April 2006, the ICTR Registrar estimated the total cost of the ICTR in connection with the hearing in The Hague to be between USD 80,000 and USD 120,000. He also stated that he had made arrangements to identify the necessary budgetary resources to support this operation.

DELIBERATIONS

4. Rule 4 states that a Chamber or a Judge may exercise their functions away from the seat of the Tribunal if so authorized by the President in the interests of justice.

¹ *Zigiranyirazo*, Decision on Defence and Prosecution Motions Related to Witness: ADE, 31 January 2006 (TC), in particular para. 34.

5. The Chamber's request under Rule 4 was based on doubts as to the adequacy and quality of video-link testimony as well as concerns that such testimony is incompatible with the right of an accused to confront his accuser.² It is correct that video-link previously risked being less weighty than that of in-court testimony.³ However, more recently, many decisions have allowed testimony by video-link, including several important and sensitive witnesses.⁴ Experience has shown that electronic transmission can provide a very clear audio and visual image of the witness to the judges and parties in the courtroom and that the ability of the Chamber to assess credibility was not impaired.⁵ Video-link therefore remains an important, necessary and reliable resource for the Tribunal.

6. In the present case, the Trial Chamber stressed the increased security risks to Witness ADE in testifying in Arusha and the crucial significance of this witness to the Prosecution case as underlying its wish to hear this witness uninterrupted and in person.⁶ In view of this assessment by the Trial Chamber, and the Registrar's conclusion that sufficient funds are currently available, the request for authorization under Rule 4 is granted on an exceptional basis. However, the Registrar also observed that these estimated additional costs are unanticipated and that later in the year there may have to be some restrictions on the budgeted activities of the Tribunal, concluding that it would be difficult to envisage another such operation within present budgetary constraints.⁷ The Chamber is consequently invited to undertake further consultations with the Registry with a view to reducing the fiscal burdens of this authorization to the extent possible.⁸

² See e.g. Decision, paras. 32-33.

³ See e.g. *Prosecutor v. Tadić*, Decision on the Defence Motion to Summon and Protect Witnesses, and on the Giving of Evidence by Video-Link, 25 June 1996, para. 21 ("the evidentiary value of testimony provided by video-link ... is not as weighty as testimony given in the courtroom.") See, subsequently, *Bagosora*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, para. 15: "the testimony of witnesses heard through electronic media runs the risk of being less weighty than that of in-court testimony if the quality of the transmission impairs the Chamber's assessment of the witness" (emphasis added).

⁴ See *inter alia* *Prosecutor v. Simba*, Decision Authorising the Taking of the Evidence of Witnesses IMG, ISG, and BJK1 by Video-Link (TC), 4 February 2005; *ibid.*, Decision on the Defence Request for Taking the Evidence of Witness FMP1 by Deposition (TC), 9 February 2005 (authorising testimony by video-link); *Prosecutor v. Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT via Video-Link, 8 October 2004, para. 7; *ibid.*, Decision on Testimony by Video-Conference (TC), 20 December 2004; *ibid.*, Decision on Ntabakuze Motion to Allow Witness DK52 to Give Testimony by Video-Conference (TC), 22 February 2005; *Prosecutor v. Muvunyi*, Decision on Prosecutor's Extremely Urgent Motion Pursuant to Trial Chamber II Directive of 23 May 2005 for Preliminary Measures to Facilitate the Use of Closed Video-Link Facilities (TC), 20 June 2005, para. 17.

⁵ *Nahimana et al.*, Decision on the Prosecutor's Application to Add Witness X to Its List of Witnesses and for Protective Measures (TC), 14 September 2001, para. 35 (noting that where the video link solution is adopted, the Accused is not thereby prejudiced in the exercise of his right to confront the witness) and *Prosecutor v. Karemera et al.*, Decision on Prosecutor's Confidential Motion for Special Protective Measures for Witness ADE, 3 May 2006, para. 6 ("this Chamber is of the view that the taking of Witness ADE's testimony by video-link will neither impair the Chamber's assessment of his credibility nor infringe the Accused's rights under Article 20 (4) (e) of the Statute of the Tribunal."). See also, at the ICTY, *Kupreškić et al.*, Decision on Appeal by Dragan Papić Against Ruling to Proceed by Deposition (Separate Opinion of Judge Hunt), 15 July 1999, paras. 29-30: "It is, of course, of the utmost importance that any tribunal of fact should have the opportunity of seeing the demeanour of the witnesses and of observing the way in which various questions put to them in cross-examination are answered. This is particularly so where the witnesses are vital to the determination of significant factual issues ... Such is the geography of the courtrooms used by the Tribunal that the view of the witness and of the witness's demeanour on the television screens provided throughout the courtroom is usually better than that from across the room."

⁶ Decision, para. 33.

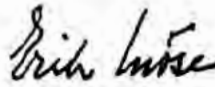
⁷ Registrar's Further Submissions of 24 April 2006, para. 21.

⁸ See, for instance, *id.*, Appendix III, which suggests possibilities for cost-saving in relation to travel costs, daily subsistence allowance and furnished office space.

FOR THE ABOVE REASONS, THE PRESIDENT

GRANTS the request.

Arusha, 12 May 2006.



Erik Møse
President

[Seal of the Tribunal]

