



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-98-29/1-T

Date: 5 July 2007

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Frederik Harhoff

Registrar: Mr. Hans Holthuis

Decision of: 5 July 2007

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR AN ORDER
TO RECEIVE THE TESTIMONY OF WITNESS T-16 BY
VIDEO-CONFERENCE LINK**

The Office of the Prosecutor:

Mr. Stefan Waespi
Ms. Carolyn Edgerton
Mr. John Docherty

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

TRIAL CHAMBER III (“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”);

BEING SEISED of the confidential Defence “Motion for an Order to Receive the Testimony of [...] T16 by Video-Conference Link with Confidential Annex A”, filed on 29 June 2007 (“Motion”), in which the Defence requests that the testimony of T16 (“Witness”) be conducted via video-conference link from the Tribunal’s Belgrade field office;

NOTING the Prosecution’s oral submission that it does not oppose the request for the video-conference link on the basis of the medical certificate provided in Annex A to the Motion, but that it considers the expected testimony of the witness to be of no relevance and that therefore it should not be allowed;¹

NOTING Rule 71*bis* of the Rules of Procedure and Evidence (“Rules”), which provides that, at the request of either party, a Trial Chamber may, in the interests of justice, order that testimony be received via video-conference link;

NOTING the decision in the case *Prosecutor v. Duško Tadić* (“*Tadić Decision*”) which established the following criteria for ordering that testimony be received via video-conference link: (1) the testimony of a witness must be shown to be sufficiently important to make it unfair to proceed without it, and (2) the witness must be unable or unwilling to come to the Tribunal;²

NOTING the Defence’s submissions that (a) the Witness is likely to testify about matters relating to paragraphs 7 and 8 of the Amended Indictment, (b) the Witness is the only witness on the Defence Rule 65*ter* List who was a member of the high command of the JNA in the Sector Sarajevo before and during the outbreak of the armed conflict and is aware of the events linked to the JNA that took place in Sarajevo during that period, and (c) the Witness is likely to proffer evidence that would undermine the adjudicated facts 9, 17, 23, 24, 26, 27, 29, 30, 31, 32, 33 and 48 (“Adjudicated Facts”);

¹ Trial Hearing, 4 July 2007, T. 7639.

² *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. The criteria set out in the *Tadić Decision* were confirmed by the Appeals Chamber in *Prosecutor v. Kvočka, Radić, Žigić and Prcać*, Case No. IT-98-30/1-A, Confidential Appeals Chamber Decision on Prosecution’s Request for Testimony by Video-Conference Link and Protective Measures, 2 July 2004, p. 3. The *Tadić Decision* also set out criteria regarding steps to be taken by the Registry, *see* para. 22.

NOTING the Defence's further submission that the Witness is elderly and is not in good health, and that his doctor has advised against travel, but that the Witness is able to go to the Tribunal's field office in Belgrade in order to testify;

NOTING the medical certificate provided in confidential Annex A to the Motion which attests to the Witness's medical condition and advice against travel;

NOTING that, according to the Defence Rule 65ter List, the estimated time for the Witness's testimony is two hours;

CONSIDERING that the Witness is unable to come to the Tribunal to testify;

CONSIDERING that the Trial Chamber has already heard a substantial amount of evidence pertaining to paragraph 7 of the Amended Indictment;

CONSIDERING that the political situation in the former Yugoslavia before the outbreak of the conflict, the situation in the Sarajevo area in 1991 and early 1992, and the role of, and events relating to, the JNA before and during the outbreak of the armed conflict in the Sarajevo area are of very limited relevance to the criminal liability of the Accused;

CONSIDERING FURTHER that the events addressed in the Adjudicated Facts are also of very limited relevance to the criminal liability of the Accused;

CONSIDERING, however, that the Defence is entitled to bring witnesses in order to rebut evidence admitted during the Prosecution case by way of judicial notice of adjudicated facts and, therefore, the testimony of the Witness that goes to the Adjudicated Facts is "sufficiently important that it would be unfair to the Defence to proceed without it";

FINDING, therefore, that it is in the interests of justice to allow the testimony of the Witness, insofar as it pertains to the Adjudicated Facts, to be received via video-conference link;

CONSIDERING that, as a consequence of limiting the Witness's testimony to the Adjudicated Facts, the testimony of the Witness will last no longer than one hour;

PURSUANT TO Rule 71bis of the Rules;

HEREBY GRANTS the Motion;

ORDERS that the testimony of the Witness shall be received through video-conference link from

the Tribunal's Belgrade field office, provisionally scheduled for 23 July 2007;

REQUESTS the Registry of the Tribunal to take all reasonable steps to ensure that the video-conference link is established in accordance with the criteria set forth in the aforementioned *Tadić* Decision.

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



Judge Patrick Robinson
Presiding

Dated this fifth day of July 2007

At The Hague

The Netherlands

[Seal of the Tribunal]