



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-05-87-T  
Date: 23 August 2007  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Iain Bonomy, Presiding  
Judge Ali Nawaz Chowhan  
Judge Tsvetana Kamenova  
Judge Janet Nosworthy, Reserve Judge

**Registrar:** Mr. Hans Holthuis

**Decision of:** 23 August 2007

**PROSECUTOR**

v.

**MILAN MILUTINOVIĆ  
NIKOLA ŠAINOVIĆ  
DRAGOLJUB OJDANIĆ  
NEBOJŠA PAVKOVIĆ  
VLADIMIR LAZAREVIĆ  
SRETEN LUKIĆ**

**PUBLIC**

**DECISION ON ŠAINOVIĆ MOTION FOR VIDEO-CONFERENCE LINK  
FOR DUŠAN MATKOVIĆ**

**Office of the Prosecutor**

Mr. Thomas Hannis  
Mr. Chester Stamp

**Counsel for the Accused**

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović  
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović  
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić  
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković  
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević  
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

**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 “Defence Motion Requesting Testimony via Video-Link Conference with Confidential Annex”, filed on 20 August 2007 by the Šainović Defence (“Motion”), requesting that the testimony of Dušan Matković be given by video-conference link, and hereby renders its decision thereon.

1. The Šainović Defence requests that Dušan Matković (“witness”) be allowed to testify via video-conference link pursuant to Rule 71 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”),<sup>1</sup> as he is prevented from physically appearing before the Trial Chamber due to health issues that have recently occurred.<sup>2</sup> The Defence asserts that, as a result of the witness’s recent surgery, he will be in recovery and unable to travel to the Hague in the time envisaged by the Defence for the presentment of its case. In support of its assertions, the Defence has annexed the witness’s relevant medical documentation, which describes the witness’s surgical treatment and general recovery requirements.<sup>3</sup> In addition, the Defence submits that the witness will give valuable testimony on a variety of issues integral to Šainović’s defence.<sup>4</sup>

2. In its response to the Motion, filed on 21 August 2007, the Prosecution suggests that more updated information should be provided before a final decision is taken.<sup>5</sup> The Prosecution maintains that, while genuine health concerns are legitimate grounds for the use of video-conference link, “physical discomfort and inconvenience alone, unless severe should not be adequate to justify the use of this procedure.”<sup>6</sup> Therefore, the Prosecution submits that there should be some further showing by the Defence that the witness cannot or should not travel on or after 23 August 2007 before the Motion is granted.<sup>7</sup> The Prosecution does not challenge the Motion on the grounds that it would be fair to proceed without the witness’s testimony.

<sup>1</sup> The Trial Chamber will construe the Motion as having been made pursuant to Rule 81 *bis* of the Rules, which recently replaced old Rule 71 *bis*. See IT/252, 13 July 2007.

<sup>2</sup> Defence Motion Requesting Testimony via Video-Conference Link With Confidential Annex, 20 August 2007, para. 6.

<sup>3</sup> Defence Motion Requesting Testimony via Video-Conference Link With Confidential Annex, 20 August 2007, Annex, p. 3.

<sup>4</sup> Defence Motion Requesting Testimony via Video-Conference Link With Confidential Annex, 20 August 2007, para. 5.

<sup>5</sup> Prosecution’s Response to Šainović’s Defence Motion Requesting Testimony via Video-Conference Link, 21 August 2007, para. 4.

<sup>6</sup> Prosecution’s Response to Šainović’s Defence Motion Requesting Testimony via Video-Conference Link, 21 August 2007, para. 3.

<sup>7</sup> Prosecution’s Response to Šainović’s Defence Motion Requesting Testimony via Video-Conference Link, 21 August 2007, para. 4.

3. Before the Trial Chamber will allow testimony to be conducted via video-conference link, it must be satisfied both that the relevant witness is unable or unwilling to come to the Tribunal and that his or her testimony is sufficiently important to make it unfair to proceed without it.<sup>8</sup>

4. The Trial Chamber considers that the Defence has demonstrated that the witness is unable to come to the Hague due to legitimate health concerns and is satisfied that the relevant medical documentation supports this position. The Chamber also considers that his testimony is sufficiently important to make it unfair to proceed without it.

5. For the foregoing reasons, the Trial Chamber, pursuant to Rules 54 and 81 *bis* of the Rules, hereby **GRANTS** the Motion, **ORDERS** that the testimony of the witness identified as Dušan Matković shall be received through video-conference link in the week of 27 August 2007, or as agreed upon by the parties, provided that the necessary equipment can be made available to the Tribunal, and **DIRECTS** the Registry to take all steps reasonably necessary to ensure that the video-conference link is established under the following conditions:

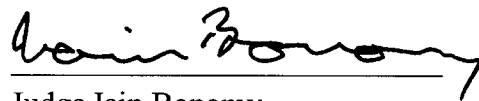
- (a) The party making the application for video-link testimony shall make arrangements for an appropriate location from which to conduct the proceedings. The venue must be conducive to the giving of truthful and open testimony.
- (b) The safety and solemnity of the proceedings at the location must be guaranteed.
- (c) The non-moving party and the Registry must be informed at every stage of the efforts of the moving party, and they must be in agreement with the proposed location. Where no agreement is reached on an appropriate location, the Trial Chamber shall hear the parties and the Registry and make a final decision.
- (d) The Trial Chamber will appoint a Presiding Officer to ensure that the testimony is given freely and voluntarily. The Presiding Officer will identify the witness and explain the nature of the proceedings and the obligation to speak the truth. The Presiding Officer will inform the witness that he or she is liable to prosecution for perjury in case of false testimony, will administer the taking of the oath, and will keep the Trial Chamber informed at all times of the conditions at the location.

---

<sup>8</sup> *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; *Prosecutor v. Kvočka et al.*, 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.

- (e) The testimony shall be given in the physical presence only of the Presiding Officer and, if necessary, of a member of the Registry technical staff, unless the Trial Chamber decides otherwise.
- (f) The witness must, through a monitor, be able to see, at various times, the Judges, the Accused, and the questioner. The Judges, the Accused, and the questioner must each be able to observe the witness on their monitor.
- (g) A statement made under solemn declaration by a witness shall be treated as having been made in the courtroom and the witness shall be liable to prosecution for perjury in exactly the same way as if he or she had given evidence at the seat of the Tribunal.

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



Judge Iain Bonomy  
Presiding

Dated this twenty-third day of August 2007  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**