



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: 24 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: 24 August 2007

PROSECUTOR

v.

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

PUBLIC

**DECISION ON OJDANIĆ MOTION FOR VIDEO-CONFERENCE LINK
FOR JOVAN MILANOVIĆ**

Office of the Prosecutor

Mr. Thomas Hannis
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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 confidential “Motion for Testimony via Video-Conference Link: Jovan Milanovic,” filed on 7 August 2007 by the Ojdanić Defence (“Motion”), requesting that the testimony of Jovan Milanović be given by video-conference link, and hereby renders its decision thereon.

1. In the Motion, the Ojdanić Defence requests an order authorising Jovan Milanović (“witness”) to testify via video-conference link from Belgrade. The Defence argues that the testimony of the witness is unique and important to Ojdanić’s case and that the witness is unwilling to travel to the Hague to give his testimony because he fears both prosecution and physical danger.¹

2. The Prosecution opposes the Motion on the grounds that neither of the pre-requisites for the allowance of video-link testimony has been met.² In terms of the witness being sufficiently important to the trial, the Prosecution contends that the evidence to be adduced through the witness has little to no bearing on the charges alleged in the Indictment.³ In addition, the Prosecution argues that the Defence has failed to set forth any reasonable explanation as to why it would cause any risk to the witness to travel to the Hague.⁴ The Prosecution further argues that the Defence has “failed to dispose of its burden of proof as regards the alleged ‘serious impediment’ preventing the witness from travelling to the Hague” and that protective measures could be granted to ensure his safety.⁵

3. The Defence seeks leave to file a reply to the Prosecution response, arguing that it would be fair and just if the Trial Chamber would allow the Defence to clarify the reasons why it sought the testimony of the witness via video-conference link, as well as to emphasise the exceptional circumstances arising from the witness’s profession that prevent him from appearing before the Chamber, even under the conditions of protective measures.⁶ In the Reply itself, the Defence

¹ Motion, paras. 4–5, 8. The Chamber does not find it necessary to go into the detail of the Motion in this public decision.

² Confidential Prosecution Response to Dragoljub Ojdanić’s Defence Motion Requesting Testimony via Video-Conference Link, 16 August 2007 (“Response”), para. 2.

³ Response, paras. 6–7.

⁴ Response, para. 8.

⁵ Response, paras. 9–10.

⁶ Confidential Ojdanić’s Defence Motion Requesting Leave to Replace “General Ojdanić’s Submission Requesting Leave to Reply and Reply to Prosecution Response to Dragoljub Ojdanić Defence Motion Requesting Testimony via Video-Conference Link,” 23 August 2007, para. 6.

furnishes little to no additional information and even admits that “there is little we can add to the submissions previously made”.⁷

4. 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.⁸ The Chamber considers this legal standard to mean that a witness who is unwilling to come to the Tribunal to give evidence must provide the Chamber with an adequate basis for his unwillingness.⁹

5. In the recent “Decision on Šainović Motion Requesting Testimony via Video-Conference Link,” issued 3 August 2007, the Chamber granted a motion for video-conference link testimony for Zoran Mijatović on the basis that the Defence had clearly set forth the circumstances in which the witness could reasonably fear for his physical safety outside of Serbia and Montenegro and considered that the witness’s concerns regarding his security—although they could have been substantiated more fully—constituted, in those particular circumstances, an adequate basis for his unwillingness to travel to the Hague to give evidence in these proceedings.

6. In that matter, the Šainović Defence had made a link between the witness’s past experiences and a specific group that might compromise his safety; however, in the instant Motion, the Ojdanić Defence offers no statement that Jovan Milanović has received threats in the past and does not submit that the witness has any personal connection to any known group that might want to harm him, should he travel outside Serbia to testify at the Tribunal. Moreover, the Ojdanić Defence fails to identify with any specificity the source of the purported threat to his safety, beyond murky speculation. The Trial Chamber therefore considers that the Defence has not demonstrated an adequate basis for the witness’s unwillingness to come to the Hague to give his evidence.

7. Having decided that the first prong of the test is not satisfied, it is unnecessary for the Chamber to deal with the second prong, namely whether the testimony of the witness is sufficiently important to make it unfair to proceed without it.

⁷ Confidential General Ojdanić’s Submission Requesting Leave to Reply and Reply to “Prosecution Response to Dragoljub Ojdanić’s Defence Motion Requesting Testimony via Video-Conference Link,” 22 August 2007, para. 7.

⁸ *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.

⁹ *Cf. Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-T, Decision on Prosecution’s Confidential Motion for Testimony to Be Heard by Video-Conference Link, 21 March 2007, para. 3.

8. For the foregoing reasons, the Trial Chamber, pursuant to Rules 54, 81 *bis*, and 126 *bis* of the Rules, hereby DENIES leave to the Ojdanić Defence to file the Reply and DENIES the Motion.

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

Judge Iain Bony
Presiding

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

[Seal of the Tribunal]