



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: 4 September 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: 4 September 2007

PROSECUTOR

v.

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

PUBLIC

**DECISION ON OJDANIĆ MOTION FOR TESTIMONY VIA VIDEO-CONFERENCE
LINK FOR GEZA FARKAŠ AND LJUBOMIR ANĐELKOVIĆ**

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 “Motion For Testimony Via Video-Conference Link: Witnesses in Ill-Health”, filed on 22 August 2007 by the Ojdanić Defence (“Motion”), requesting that the testimonies of Geza Farkaš and Ljubomir Anđelković be given by video-conference link, and hereby renders its decision thereon.¹

1. The Ojdanić Defence requests that Geza Farkaš be allowed to testify via video-conference link pursuant to Rule 81 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), as he is unable to travel to The Hague to give testimony due to ill health. In support of its assertions, the Defence has annexed the witness’s relevant medical records, which detail his medical history and condition.² In addition, the Defence submits that the witness will give valuable testimony, including his account of “numerous personal conversations with General Ojdanić about crimes committed in Kosovo and what to do about them.”³

2. The Defence further requests that Ljubomir Anđelković be allowed to testify via video-conference link, as he is also unable to travel to The Hague to give testimony due to ill health. As with the previous witness, the Defence has annexed his relevant medical records.⁴ Finally, the Defence submits that the witness will give unique evidence regarding the information received by the VJ General Staff concerning crimes in Kosovo and actions taken in response to that information.⁵

3. The Prosecution has indicated that it will not respond to the Motion and leaves the decision to the discretion of the Chamber.⁶

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.⁷

¹ Although the Motion was filed confidentially, the Chamber issues this public decision in which there is no detailed information regarding either witness’s medical condition.

² Motion, Annex A.

³ Motion, para. 7.

⁴ Motion, Annex B.

⁵ Motion, para. 8.

⁶ Email from Prosecution to Chamber and Defence, 4 September 2007.

⁷ *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.

5. The Trial Chamber considers that the Defence has demonstrated that the witnesses are 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 both of the witnesses' testimonies are sufficiently important to make it unfair to proceed without them.

6. 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 witnesses identified as Geza Farkaš and Ljubomir Anđelković shall be received through video-conference link on a date to be determined by the Defence, in either late September or early October 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.
- (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.

A handwritten signature in black ink, appearing to read "Iain Bony", written over a horizontal line.

Judge Iain Bony
Presiding

Dated this fourth day of September 2007
At The Hague
The Netherlands

[Seal of the Tribunal]