



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-08-91-T
Date: 27 October 2009
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 27 October 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**WRITTEN REASONS FOR THE TRIAL CHAMBER'S
ORAL RULING GRANTING VIDEO-CONFERENCE
LINK TESTIMONY FOR ST161**

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Igor Pantelić and Mr. Dragan Krgović for Stojan Župljanin

TRIAL CHAMBER II (“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”);

RECALLING that on 22 October 2009 the Trial Chamber orally ruled that “in respect of Witness ST161, that the application to have his evidence by videolink is granted, and a written decision will follow” (“Oral Decision”);¹

RECALLING that on 19 October 2009 the Prosecution filed a motion for the testimony of ST161 to be heard via video-conference link from the Tribunal’s Sarajevo Field Office on 11 and 12 November 2009 (“Motion”),² to which it attached a medical certificate which provides that ST161 is “[i]ncapable of travel” (“Medical Certificate”);³

RECALLING that on 21 October 2009 the Prosecution advised that “it must change the dates for this witness to testify from 11 and 12 November 2009 to 16 and 17 November 2009”;⁴

NOTING that at the hearing on 22 October 2009 the Defence of Mićo Stanišić and the Defence of Stojan Župljanin stated that they do not object to ST161 being heard via video-conference link;⁵

CONSIDERING that the Prosecution has, on the basis of the documents attached to the Motion including the Medical Certificate, satisfied its burden of demonstrating that it is in the interest of justice to hear the testimony of ST161 via video-conference link on 16 and 17 November 2009;

CONSIDERING that hearing testimony by video-conference link does not violate the rights of the accused to cross-examine the witness and to confront the witness directly and that according to the

¹ Hearing, 22 Oct 2009, T. 1933. The Prosecution initially filed the Prosecution’s motion for testimony to be heard via video-conference link, with annex A, confidential, 29 Sep 2009, in which it requested that ST161 be heard via video-conference link. On the same date, in the Order on Prosecution’s motion for testimony to be heard via video-conference link, with annex A, 29 Sep 2009, the Trial Chamber, finding that it was unable to assess the motion as the documents attached in support of it were not submitted in an official language of the Tribunal, rejected the motion without prejudice to a subsequent application and documentation in an official language of the Tribunal. The Prosecution’s re-submission of its motion for testimony to be heard via video-conference link, with annex A, confidential, 30 Sep 2009, again requested that ST161 be heard via video-conference link and included supporting medical records in one of the official languages. At the hearing on 1 October 2009, the Trial Chamber informed the parties that in order to make an assessment of whether or not a witness, whose testimony is sought to be heard pursuant to Rule 81 *bis*, is fit to travel, the Trial Chamber would be assisted by a medical certificate addressing this issue, at T.692. On 2 October 2009 the Trial Chamber dismissed the re-submitted motion in respect of ST161, “without prejudice to the timely filing of a future reasoned application” finding that it was “not satisfied that the Prosecution [had] established that it [was] both necessary and feasible to hear the testimony of ST161 via video-conference on 8-9 October 2009” in the Decision on Prosecution’s motion for testimony of Witnesses ST161 and ST203 to be heard via video-conference link, 2 Oct 2009, pp 3-4.

² Prosecution’s further motion for testimony of Witness ST-161 to be heard via video-conference link, with annexes A and B, confidential, 19 Oct 2009, para. 1.

³ Motion, annex B.

⁴ Prosecution’s notice of change in date for testimony of Witness ST-161 to be heard via video-conference link, confidential, 21 Oct 2009, para. 1.

jurisprudence of the Tribunal, testimony of witnesses by video-conference link should be given as much probative value as testimony presented in the courtroom;⁶

PURSUANT TO Rules 54 and 81 *bis* of the Rules;

AFFIRMS the Oral Decision; and

ORDERS:

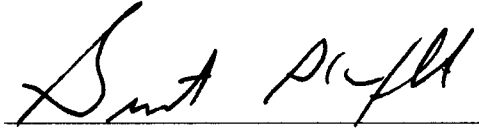
- a. that ST161 shall testify via video-conference link from the Sarajevo Field Office on 16 and 17 November 2009, or at a date to be decided should the witness order be amended;
- b. the Registrar to take all reasonable steps to ensure that the video-conference link is established for 16 and 17 November 2009 and to advise the Trial Chamber should that not be possible;
- c. the Registrar to appoint a Presiding Officer to ensure that the testimony is given freely and voluntarily;
- d. the Presiding Officer to identify the witness and explain the nature of the proceedings and the obligation to speak the truth, to inform the witness that he or she is liable to prosecution for perjury in case of false testimony, to administer the taking of the oath, and to keep the Trial Chamber informed at all times of the conditions at the location;
- e. that the testimony of ST161 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. that the witness, using a monitor, shall be able to see, at various times, the Judges, the Accused, and the questioner and that the Judges, the Accused, and the questioner must be able to observe the witness on their monitors; and

⁵ Hearing, 22 Oct 2009, T. 1929, 1931.

⁶ *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-T, Decision on Prosecution motion for receiving testimony by video-conference link, 11 Mar 2004; *Prosecutor v. Milutinović et al*, Case No. IT-99-37-T, Decision on Prosecution motion for testimony of K58 to be heard via video-link conference, 1 Nov 2006.

- g. that any statement made under solemn declaration by the witness shall be treated as having been made in the courtroom and that 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 version being authoritative.



Judge Burton Hall
Presiding

Dated this twenty-seventh day of October 2009

At The Hague

The Netherlands

[Seal of the Tribunal]