



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-95-5/18-T

Date: 30 May 2013

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 30 May 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S SECOND MOTION FOR VIDEO LINK TESTIMONY
FOR ČEDOMIR KLJAJIĆ**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 Accused’s “Second Motion for Video Link for Čedomir Kljajić (KW226)”, filed publicly with a confidential annex on 7 May 2013 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused renews his previous “Motion for Video Link for Čedomir Kljajić (KW226)” filed on 18 March 2013 (“First Motion”),¹ wherein he requested that the testimony of witness Čedomir Kljajić (“Witness”) be conducted by video link pursuant to Rule 81 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).² In its “Decision on Accused’s Motion for Video Link Testimony for Čedomir Kljajić”, issued on 17 April 2013 (“Decision on First Motion”), the Chamber denied the First Motion without prejudice because it lacked specific details regarding the Witness’s medical condition.³

2. The Accused now explains that since the issuance of the Decision on First Motion, the government of Canada has provided him with detailed records of the Witness’s medical condition.⁴ In Confidential Annex “A” to the Motion (“Annex”), the Accused appends three medical reports providing additional details regarding the Witness’s health,⁵ and requests that the Chamber schedule his testimony for 18 July 2013 at 2 p.m. local time in The Hague.⁶

3. On 21 May 2013, the Office of the Prosecutor (“Prosecution”) filed publicly with a confidential appendix the “Prosecution Response to Karadžić’s Second Motion for Video-Link Conference for Witness Čedomir Kljajić” (“Response”), in which it opposes the Motion.⁷ The Prosecution asserts that the medical reports do not specifically address the feasibility of the Witness travelling to The Hague and therefore do not establish that the Witness is either unable to travel to the seat of the Tribunal or that he has good reasons to be unwilling to do so.⁸ Accordingly, the

¹ Motion, para. 4.

² First Motion, paras. 1, 4, 7.

³ Decision on First Motion, paras. 9–10.

⁴ Motion, paras. 2–3.

⁵ Annex, pp. 1–18. The English translation of the French original Annex was filed on 15 May 2013.

⁶ Motion, para. 4.

⁷ Response, paras. 1, 5.

⁸ Response, para. 3.

Prosecution argues that the Chamber need not determine whether it is in the interests of justice to grant the Motion.⁹

II. Applicable Law

4. Rule 81 *bis* of the Rules provides that “[a]t the request of a party or *proprio motu*, a Judge or a Chamber may order, if consistent with the interests of justice, that proceedings be conducted by way of video-conference link”.

5. The Chamber has previously outlined the criteria it considers when assessing whether to allow testimony via video link, namely:

- i. the witness must be unable, or have good reasons to be unwilling, to come to the Tribunal;
- ii. the witness’s testimony must be sufficiently important to make it unfair to the requesting party to proceed without it; and
- iii. the accused must not be prejudiced in the exercise of his or her right to confront the witness.¹⁰

6. If these criteria are satisfied, then the Chamber must “determine whether, on the basis of all the relevant considerations, it would be in the interests of justice to grant the request for video-conference link”.¹¹

III. Discussion

7. The Chamber recalls its findings in the Decision on First Motion that the Witness’s proposed testimony via video link satisfies criteria (ii) and (iii) above,¹² and will therefore focus its present analysis on whether criterion (i) is met in light of the material provided by the Accused in support of the Motion. Having reviewed the additional documentation provided in the Annex, which contains reports from three different doctors dating from October 2010, September 2012, and December 2012, respectively, the Chamber considers the information provided to be

⁹ Response, para. 4.

¹⁰ Decision on First Motion, citing Decision on Video-Conference Link and Request for Protective Measures for KDZ595, 18 August 2010 (“KDZ595 Decision”), para. 6; Decision on Prosecution’s Motion for Testimony to be Heard via Video-Conference Link, 17 June 2010, para. 5.

¹¹ KDZ595 Decision, para. 7, citing *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Popović’s Motion Requesting Video-Conference Link Testimony of Two Witnesses, 28 May 2008, para. 8, and *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Prosecution Motions to Hear Witnesses by Video-Conference Link, 25 February 2010, para. 8.

¹² Decision on First Motion, paras. 7–8.

sufficiently contemporaneous in light of the medical circumstances described therein to enable it to render a decision on the Motion. The Chamber further notes that although the reports do not contain explicit recommendations regarding the advisability of the Witness travelling, they nevertheless describe multiple persistent and serious medical conditions, which have prevented him from returning to work as of December 2012.¹³ The Chamber is thus satisfied that the Witness has good reason to be unwilling to come to the Tribunal. Therefore, and on the basis of its prior determination that criteria (ii) and (iii) are met,¹⁴ the Chamber finds that it would be in the interests of justice to grant the request for video link testimony.

IV. Disposition

8. Accordingly, the Chamber, pursuant to Rules 54 and 81 *bis* of the Rules, hereby **GRANTS** the Motion and **REQUESTS** the Registry to take all necessary measures to implement the terms of this Decision.

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



Judge O-Gon Kwon
Presiding

Dated this thirtieth day of May 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

¹³ Annex, p. 13.

¹⁴ Decision on First Motion, para. 9.