



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: 27 August 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: 27 August 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR VIDEO LINK TESTIMONY FOR WITNESS
MILE DMIČIĆ**

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 “Motion for Video Link for Mile Dmičić”, filed publicly with a confidential annex on 1 August 2013 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests that the testimony of witness Mile Dmičić (“Witness”) be conducted by video link from Banja Luka on 3 September 2013¹ pursuant to Rule 81 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) because the Witness is both unable and unwilling to come to the Tribunal and, in the Accused’s submission, has good reasons for being unwilling to do so.² The Accused attaches a confidential Annex “A” to the Motion (“Annex A”), which contains (1) a declaration from his legal adviser describing the latter’s contact with the Witness and the Witness’s reasons for wishing to testify via video link in further detail, and (2) a medical certificate naming the specific health conditions affecting the Witness, stating that these conditions require “complex and continuous therapeutic treatment over a long period of time”, and asserting that “there is a risk of travelling to attend the testimony in the Netherlands”.³

2. The Accused also submits that the Witness’s testimony is sufficiently important to his case because the Witness was Head of Office and Secretary General to the President of Republika Srpska, met with the Accused in this capacity on a daily basis, and can testify that no information about the killing of prisoners from Srebrenica was received in the President’s Office.⁴ The Accused further asserts that the Office of the Prosecutor (“Prosecution”) will not be prejudiced by the Witness’s testimony being heard by video link.⁵

3. On 6 August 2013, the Prosecution filed the “Prosecution Response to Karadžić’s Motion for Video Link for Witness Mile Dmičić” (“Response”) publicly with a confidential appendix (“Appendix”), opposing the Motion. The Prosecution notes that the Chamber has previously found that medical documentation that simply describes a witness’s health condition and advises against travel without further elaboration regarding the prohibited length of travel or the effect of such

¹ On 7 August 2013, the Accused amended his request to pertain to 6 November 2013. Submission on Scheduling of Defence Witnesses, 7 August 2013, para. 7.

² Motion, paras. 1, 4.

³ Annex A.

⁴ Motion, para. 5.

⁵ Motion, para. 6.

travel on the witness's health precluded the Chamber from assessing the witness's unwillingness or inability to come to the Tribunal.⁶ The Prosecution asserts that the information provided by the Accused in the Motion is similarly cursory in that the medical certificate purports to be based on unspecified and undated "medical records", does not explain how the medical conditions listed affect the witness's ability to travel, does not elaborate on the length of travel proscribed, and does not explain whether any necessary treatment could be administered in The Hague.⁷ The Prosecution also asserts that two medical conditions cited by the doctor are common and would not normally prevent such travel.⁸ Without further information, the Prosecution submits, the Chamber cannot make the required assessment and should therefore deny 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

⁶ Response, para. 2, citing T. 39976 (19 June 2013); Decision on Accused's Motion for Video Link Testimony for Witness Čedomir Kljajić, 17 April 2013 ("Kljajić Video Link Decision"), para. 9.

⁷ Response, para. 2; Appendix, paras. 1–4.

⁸ Appendix, para. 3.

⁹ Appendix, para. 5; Response, para. 3.

¹⁰ 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.

III. Discussion

7. In relation to the first criterion for determining the appropriateness of hearing testimony via video link, the Chamber has reviewed the information provided by the Accused in support of the Motion. The Chamber considers the level of detail provided in the medical information to be unsatisfactory for a number of reasons. First, the medical certificate appended to the Motion in Annex A appears to have been prepared on the basis of the Witness's doctor's review of unspecified "medical documents", the dates of which have not been specified in the medical certificate. Second, the Witness's doctor advises that "there is a risk of travelling to attend the testimony in the Netherlands for the following diseases" but simply lists a number of medical conditions which "request [sic] complex and continuous therapeutic treatment" without explaining how these medical conditions impair the Witness's ability to travel.¹² Third, the Witness's doctor makes a broad statement regarding the length of treatment required but does not explain how such treatment precludes travel. No further detail is provided in the medical certificate, nor is the certificate supported by medical records that might complement the doctor's statements.

8. As the Chamber has repeatedly explained, the Chamber considers the practice of merely listing a number of medical conditions without explaining their impact on the Witness's ability to travel or the anticipated effect of travel on the Witness's health to be problematic.¹³ Since the Chamber is of the view that the medical documentation provided is insufficient to allow it to assess whether the Witness is in fact unable or has good reason to be unwilling to come to the Tribunal to testify, the Chamber finds that criterion (i) has not been met. Therefore, the Chamber need not address criteria (ii) and (iii), and shall deny the Motion.

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 Annex A.

¹³ Kljajić Video Link Decision, para. 9; T. 39976 (19 June 2013); Decision on Accused's Motion for Video Link Testimony for Witness Nikola Poplašen, 13 August 2013, para. 10.

IV. Disposition

9. Accordingly, the Chamber, pursuant to Rules 54 and 81 *bis* of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-seventh day of August 2013
At The Hague
The Netherlands

[Seal of the Tribunal]