



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 January 2014

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 January 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MOTION FOR VIDEO-CONFERENCE LINK TESTIMONY
FOR SRBOLJUB JOVIČINAC**

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 “Motion for Video Link for Srboljub Jovičinac (“KW201)” filed by the Accused on 20 January 2014 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests that the testimony of witness Srboljub Jovičinac (“Witness”) be conducted by video-conference link from Belgrade on 4 February 2014 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.¹ In confidential Annex A to the Motion (“Annex A”), the Accused attaches a declaration from his case manager describing in further detail the latter’s contact with the Witness and the Witness’s reasons for wishing to testify via video-conference link.²

2. The Accused also submits that the Witness’s testimony is sufficiently important to his case in that the Witness was the Military Prosecutor in the 1st Krajina Corps and, as such, was responsible for some of the cases discussed during the course of these proceedings.³ The Accused further asserts that the Office of the Prosecutor (“Prosecution”) will not be prejudiced by the Witness’s testimony being heard via video-conference link.⁴ Finally, the Accused notes that the Witness’s testimony was heard via video-conference link when he testified in the *Stanišić and Župljanin* case in February 2012.⁵

3. The Prosecution filed the “Prosecution Response to Motion for Video Link for Srboljub Jovičinac” on 21 January 2014 (“Response”), opposing the Motion.⁶ The Prosecution submits that the Motion does not meet the criteria under Rule 81 *bis* and that it should therefore be denied pending the production of independent medical documentation in support of the information in Annex A.⁷

¹ Motion, paras. 1, 4.

² Motion, Annex A.

³ Motion, para. 6.

⁴ Motion, para. 7.

⁵ Motion, para. 5.

⁶ Response, para. 1.

⁷ Response, para. 4.

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-conference 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.⁸

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”.⁹

III. Discussion

7. In assessing the first criterion for determining the appropriateness of hearing testimony via video-conference link, the Chamber has reviewed the information provided by the Accused in support of the Motion. The Chamber notes that the Witness’s account of his medical condition is not supported by any medical documentation and that the Witness does not explain why his condition prevents him from travelling. The Chamber has reiterated on numerous occasions throughout this trial that an assessment under Rule 81 *bis* requires that the Chamber be in possession of detailed medical information which adequately explains the witness’s inability to travel.¹⁰ This is not the case in the present instance. The Chamber is therefore not satisfied that the

⁸ 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.

⁹ 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.

¹⁰ Decision on Accused’s Motion for Video Link Testimony for Witness Čedomir Kljajić, 17 April 2013, para. 9; Decision on Accused’s Motion for Video Link Testimony for Witness Nikola Poplašen, 13 August 2013, paras. 10–11; Decision on Accused’s Motion for Video Link Testimony for Witness Mile Dmičić, 27 August 2013, paras. 7–8.

information provided in support of the Motion is sufficient to allow it to assess whether the Witness is in fact unable or has good reason for being unwilling to come to the Tribunal to testify, and thus finds that criterion (i) is not satisfied. Accordingly, the Chamber need not address criteria (ii) and (iii), and shall deny the Motion.

IV. Disposition

8. 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 January 2014
At The Hague
The Netherlands

[Seal of the Tribunal]