

**UNITED
NATIONS**



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-04-75-T
Date: 10 October 2014
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 10 October 2014

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR TESTIMONY OF DGH-042 TO BE
HEARD VIA VIDEO-CONFERENCE LINK**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

1. **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 hereby seised of the “Defence Motion for Testimony of Zoran Jevtović (DGH-042) to be Heard *via* Video-Link Conference” filed with an annex on 1 September 2014 (“Motion”). On 16 September 2014, the Prosecution filed the “Prosecution Response to Motion for Testimony of Zoran Jevtović (DGH-042) to be Heard *via* Video-Conference Link” (“Response”). On 23 September 2014, the Defence confidentially filed the “Consolidated Reply to Prosecution Responses to Motions for Testimony of DGH-006, DGH-015, DGH-039, DGH-042 and DGH-074 by Video-Conference” (“Reply”).

A. Submissions

2. In the Motion, the Defence requests that DGH-042’s testimony be heard *via* video-conference link because the witness has good reason to be unwilling to travel to the Tribunal.¹ The Defence submits that DGH-042 is a university professor who works with a large number of students and that he believes that his absence for more than two days could cause substantial disruption to the “teaching-learning process” of his students.² In support, the Defence cites previous occasions before the Tribunal where witnesses have been permitted to give testimony *via* video-conference link because giving testimony in person would have been substantially burdensome for the witness or those affected by the witness’s absence.³ The Defence states its belief that, in the absence of the Trial Chamber granting testimony *via* video-conference link, it would need to obtain a subpoena to compel DGH-042’s appearance and submits that this has previously been taken into account as a factor in favour of granting testimony *via* video-conference link.⁴ The Defence further submits that allowing the testimony of DGH-042 *via* video-conference will not prejudice the right of the parties to cross-examine the witness and that DGH-042’s evidence is sufficiently important to make it unfair to proceed without it.⁵ Finally, the Defence submits that DGH-042’s testimony is particularly suitable to be heard *via* video-conference link because (a) it is limited to a discrete event and is not

¹ Motion, paras 1, 10.

² Motion, para. 4, Annex.

³ Motion, para. 5 citing *The Prosecutor v. Mladić*, Case No. IT-09-92-T, Reasons for the Decision on Urgent Prosecution Motion for Testimony of Witness RM-015 to be Heard *via* Video-Conference Link, 14 February 2013, para. 6; *The Prosecutor v. Orić*, Case No. IT-03-68-T, Decision on Prosecution Motion for the Testimony of a Witness *via* Video-Conference Link, 16 March 2005; *The Prosecutor v. Haradinaj et al.*, Case No IT-04-84-T, Decision on Video-Conference Link for Witness Number 48 in the Tentative Order of Testimony, 28 August 2007, para. 8; *The Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-T, Decision on Prosecution’s Motion for Testimony *via* Video-Link for Witness 54, 7 September 2007, para. 6.

⁴ Motion, para. 6 citing *The Prosecutor v. Mladić*, Case No. IT-09-92-T, Reasons for the Decision on Prosecution Motion for Testimony of Witness RM-284 *via* Video-Conference Link, 10 May 2013, para. 10.

⁵ Motion, paras 7-8.

complex; and (b) the Prosecution's previous cross-examination of the witness is included in the written statement, giving the Trial Chamber a basis on which to assess his credibility.⁶

3. In the Response, the Prosecution submits that the Defence has not demonstrated that DGH-042 is unable, or has good reason to be unwilling, to come to the Tribunal to give evidence.⁷ It asserts that DGH-042's travel to The Hague to give a single day of testimony would cause limited disruption to his students and that there is nothing remarkable about a witness having to make arrangements to be away from his or her work to give testimony at the Tribunal.⁸ It points out that the Defence has not indicated whether the possibility of alternative teaching arrangements has been explored with the Tribunal's Victims and Witnesses Section that could facilitate DGH-042's testimony in person.⁹ The Prosecution further submits that: (a) the cases cited by the Defence in support of its argument are distinguishable because they concern witnesses whose absence would have had a significant impact on the well-being of themselves or others;¹⁰ and (b) the Defence's argument that it may have to obtain a subpoena to compel DGH-042's appearance is both premature and irrelevant to the legal test for requests to give testimony *via* video-conference link.¹¹ Lastly, the Prosecution submits that DGH-042's testimony is not sufficiently important to make it unfair to proceed without it because another witness, DGH-043, will testify on the same topic.¹²

4. In the Reply, the Defence argues that the Prosecution understates the disruption that giving testimony would cause to DGH-042's professional life, stating that a single day of testimony could require DGH-042 to be absent from the university and his students for up to five days.¹³

B. Applicable Law

5. Rule 81 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") provides that "[a]t the request of a party or *proprio motu*, a Judge or Chamber may order, if consistent with the interests of justice, that proceedings be conducted by way of video-conference link". A witness may give his or her testimony via video-conference link if three requirements are met: (a) the witness must be unable, or have good reasons to be unwilling, to come to the Tribunal; (b) the witness's testimony must be sufficiently important to make it unfair to the requesting party to proceed without it; and (c) the accused must not be prejudiced in the exercise of his or her right to confront the witness.¹⁴ After having considered the above requirements, the Chamber must ultimately determine

⁶ Motion, para. 9.

⁷ Response, paras 1-2.

⁸ Response, paras 2-4.

⁹ Response, para. 3.

¹⁰ Response, para. 4.

¹¹ Response, para. 5.

¹² Response, para. 6.

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.¹⁵

C. Discussion

6. The Chamber recalls that video-conference link is intended to be an exceptional mode for receiving testimony according to the Rules and jurisprudence of the ICTY.¹⁶ The cases before the Tribunal cited by the Defence involve situations where the absence of a witness would have had a significant impact on the well-being of the witness or others.¹⁷ The Chamber recognises that appearing to testify in any trial is likely to be an inconvenience—either personal or professional—for any witness and mere inconvenience cannot constitute a good reason for excusing the attendance of a witness. Furthermore, the Trial Chamber does not consider it relevant to the legal test for determinations involving Rule 81 *bis* that the Defence may have to obtain a subpoena to compel DGH-042’s appearance in The Hague. This possibility can be dealt with if and when it arises. As a result of the Chamber’s finding that the Defence has not fulfilled the requirement that the witness must be unable, or have good reasons to be unwilling, to come to the Tribunal, it is unnecessary for it to address the other two prongs of the legal test. The Trial Chamber finds that the Defence has failed to show that it would be in the interests of justice to grant DGH-042’s request for testimony *via* video-conference link.

¹³ Reply, para. 15.

¹⁴ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Prosecution’s Motion for Testimony to be Heard via Video-Conference Link, 17 June 2010 (“*Karadžić* Decision”), para. 5; *Prosecutor v. D. 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, 26 June 1996, para. 19. *See also* *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Reasons for Decision on Prosecution’s Renewed Motion for Evidence of Witness 82 to be Presented via Video-Conference Link from Zagreb and Reasons for Decision on the Request of the Markač Defence to Conduct Cross-Examination in Zagreb, 26 February 2009, para. 17; *Prosecutor v. J. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Prosecution Motions to Hear Witnesses by Video-Conference Link, 25 February 2010 (“*Stanišić and Simatović* Decision”), para. 8.

¹⁵ *Karadžić* Decision, para. 6; *Stanišić and Simatović* Decision, para. 8.

¹⁶ Decision on Prosecution Motion for Testimony to be Heard via Video-Conference Link or, in the Alternative, for Temporary Transfer of Detained Witness (GH-002) (confidential), 19 June 2013, para. 9.

¹⁷ Motion, para. 5 *citing* *Prosecutor v. Mladić*, Case No. IT-09-92-T, Reasons for the Decision on Urgent Prosecution Motion for Testimony of Witness RM-015 to be Heard *via* Video-Conference Link, 15 February 2013, para. 6 (the witness was required to care for his seriously ill wife in circumstances where no other family member was temporarily available to provide this care); *Prosecutor v. Orić*, Case No. IT-03-68-T, Decision on Prosecution Motion for the Testimony of a Witness via Video-Conference Link, 16 March 2005 (the witness was a nursing mother); *Prosecutor v. Haradinaj et al.*, Case No IT-04-84-T, Decision on Video-Conference Link for Witness Number 48 in the Tentative Order of Testimony, 28 August 2007, para. 8 (the witness was the primary breadwinner of a family living in a refugee shelter whose absence would cause his family severe hardship) and Decision on Prosecution’s Motion for Testimony via Video-Link for Witness 54, 7 September 2007, para. 6 (the witness was a teenager who had suffered traumatic experiences during the conflict and, on the advice of the Victims and Witnesses Section, should be permitted to give evidence in the presence of his entire family and in a familiar environment).

D. Disposition

7. Accordingly, the Trial Chamber, pursuant to Rules 81 *bis* and 126 *bis* of the Rules, hereby:
- (a) **GRANTS** the Defence leave to file the Reply in relation to DGH-042; and
 - (b) **DENIES** the Motion.

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

Done this tenth day of October 2014,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]