



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: 13 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: 13 August 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR VIDEO LINK TESTIMONY FOR WITNESS
NIKOLA POPLAŠEN**

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 Nikola Poplašen (KW387),” filed publicly with two confidential annexes on 27 May 2013 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests that the testimony of witness Nikola Poplašen (“Witness”) be conducted by video link pursuant to Rule 81 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) due to the Witness’s medical condition, which, in the Accused’s submission, renders the Witness unable to travel to The Hague.¹ The Accused attaches a confidential Annex “A” to the Motion (“Annex A to the Motion”), which contains 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, as well as a confidential Annex “B” to the Motion (“Annex B to the Motion”), which contains a medical certificate from the Witness’s family doctor advising him against “taking any long trips lasting a number of days”.² The Accused submits that the Witness’s testimony is sufficiently important to his case because, *inter alia*, the Witness was an adviser to the Bosnian Serb Presidency and thus worked closely with the Accused, and can testify to the absence of a plan to expel Bosnian Muslims from Serb-held areas of Bosnia and Herzegovina.³ 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.⁴

2. On 30 May 2013, the Prosecution filed the “Prosecution Response to Karadžić’s Motion for Video Link for Witness Nikola Poplašen (KW387)” (“Response”) publicly with a confidential appendix (“Appendix to the Response”), opposing the Motion. The Prosecution observes that (1) the Witness testified in person in another case before the Tribunal in 2006 and (2) the Motion does not describe any change in the circumstances of the Witness’s health since then that would support his submission that he is now unable to travel to the seat of the Tribunal in order to testify in person.⁵ The Prosecution also asserts that the information provided by the Accused in the Motion is not sufficiently specific or substantiated to justify his request,⁶ that it is unclear which documents

¹ Motion, paras. 1, 4.

² Annex B to the Motion.

³ Motion, para. 5.

⁴ Motion, para. 7.

⁵ Response, para. 1. *See also* Appendix to the Response, para. 2.

⁶ Response, para. 1; Appendix to the Response, paras. 1–2.

the Witness's family doctor relied upon when formulating his advice against travel, and that several medical conditions cited by the Witness's family doctor as justification are common and would not normally prevent such travel.⁷

3. Having been granted leave by the Chamber,⁸ the Accused filed a confidential "Reply Brief: Motion for Video Link for Nikola Poplašen (KW387)" ("Reply") on 31 May 2013, providing additional information regarding the Witness's inability to travel to The Hague. The Accused submits that, having received the Prosecution's Response, his team contacted the Witness, who stated that his health condition has deteriorated since 2006, provided specific details about those conditions, and maintained his inability to travel.⁹ The Accused contends that this assertion is verified by the letter of the Witness's physician that was attached to the original Motion.¹⁰

4. On 19 June 2013, the Chamber issued the following oral guidance ("Oral Guidance"), stating that it had reviewed the information and medical documentation provided by the Accused and was concerned by the latter's cursory nature, which

simply describe[d] the relevant witnesses' symptoms or diagnosis and advise[d] against "long trips" without elaborating further on the length of travel recommended or describing the anticipated effect of such travel on the witnesses' health. The Chamber is thus unable to assess whether Poplašen [...] [is] in fact unable or ha[s] good reasons to be unwilling to come to the Tribunal. The Chamber hereby requests the accused to obtain further medical documentation to address these deficiencies in the information already provided.¹¹

5. On 25 July 2013, the Accused filed publicly with a confidential annex the "Supplemental Submission in Support of Motion for Video Link for Nikola Poplašen (KW387)" ("Supplemental Submission"), in which the Accused states that although requested to do so, the Witness's physician declined to give a more detailed letter.¹² The Accused relates that the Witness maintains that he is unable to testify for health reasons, and submits that the information provided in connection with the Motion is sufficient to establish "good reason" for the Witness's unwillingness.¹³ The Accused also appends a confidential Annex to the Supplemental Submission ("Confidential Annex to Supplemental Submission"), which contains a sworn declaration from the

⁷ Appendix to the Response, paras. 2–3.

⁸ The Accused filed a "Request for Leave to Reply: Motion for Video Link for Nikola Poplašen" on 31 May 2013, which was granted by the Chamber on the same day. T. 39125 (31 May 2013).

⁹ Reply, para. 5.

¹⁰ Reply, para. 5.

¹¹ T. 39976 (19 June 2013).

¹² Supplemental Submission, para. 5. The Accused also amended the requested date of testimony to 3 September 2013. Supplemental Submission, para. 8. On 7 August 2013, the Accused again amended his request to pertain to 6 November 2013. Submission on Scheduling of Defence Witnesses, 7 August 2013, para. 7.

¹³ Supplemental Submission, paras. 5–6.

Accused's legal adviser purporting to interpret the medical information originally provided in connection with the Motion and explaining that defence witnesses must stay in The Hague for a minimum of five days in order to complete the process of preparing to testify.¹⁴ The Accused's legal adviser also asserts that the distance between Banja Luka and The Hague "qualifies as a long trip" and contends that, on the basis of the medical documentation provided and in line with other similarly situated witnesses,¹⁵ the Witness has good reason to be unwilling to come to The Hague to testify.¹⁶ The Accused reiterates his request to hear the Witness's evidence via video link from Banja Luka and proposes the date of 3 September 2013 at 9:00 a.m.¹⁷

6. On 31 July 2013, the Prosecution filed the "Prosecution Response to Karadžić's Supplemental Submission in Support of Motion for Video Link for Nikola Poplašen (KW387)" ("Response to Supplemental Submission"), in which it maintains its opposition in relation to the Motion.¹⁸ The Prosecution submits that as the additional information provided by the Accused is provided by a layperson, it does not and cannot sufficiently remedy the deficiencies identified by the Chamber in the Oral guidance, and that therefore, the Motion must be denied.¹⁹

II. Applicable Law

7. 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".

8. 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

¹⁴ Confidential Annex to Supplemental Submission, paras. 4–5.

¹⁵ The Accused's legal adviser also relays the Witness's assertion that travel would cause him pain and discomfort, as well as the Witness's statement that his doctor had "laughed" when told that the original letter contained in Annex B to the Motion did not suffice. Confidential Annex to Supplemental Submission, paras. 8–9. *See also* Supplemental Submission, para. 4, citing, *inter alia*, Decision on Video-Conference Link and Request for Protective Measures for KDZ595, 18 August 2010 ("KDZ595 Decision").

¹⁶ Confidential Annex to Supplemental Submission, para. 10.

¹⁷ Supplemental Submission, para. 8.

¹⁸ Response to Supplemental Submission, para. 1.

¹⁹ Response to Supplemental Submission, paras. 2–3.

- iii. the accused must not be prejudiced in the exercise of his or her right to confront the witness.²⁰

9. 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”.²¹

III. Discussion

10. 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 notes that the medical certificate provided in Annex B to the Motion is dated 23 January 2013 and thus post-dates the Witness’s previous testimony, in person, before the Tribunal. However, the certificate seems to have been prepared on the basis of the Witness’s family doctor’s review of unspecified “medical documents” and merely advises the Witness against taking “any long trips lasting a number of days”.²² The Chamber considers that the use of the terms “long trips” and “a number of days” without further elaboration is problematically vague, as is the practice of simply 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.²³

11. In the view of the Chamber, the explanations provided by the Accused’s legal adviser are of limited utility, given that he is not a medical expert. The Chamber also considers the unwillingness of the Witness’s doctor to provide further explanation in order to assist the Chamber to be unsatisfactory. Indeed, as the Chamber previously stated in its Oral Guidance, the Chamber is of the view that the medical documentation provided in Annex B 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.²⁴ In light of the fact that criterion (i) has not been met, the Chamber need not address criteria (ii) and (iii). The Chamber therefore denies the Motion.

²⁰ KDZ595 Decision, para. 6; Decision on Prosecution’s Motion for Testimony to be Heard via Video-Conference Link, 17 June 2010, para. 5.

²¹ 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.

²² Annex B to the Motion.

²³ Annex B to the Motion.

²⁴ The Chamber notes that its insistence on being provided with more detailed medical information is not inconsistent with its prior ruling on the motion for video link in relation to Witness KDZ595. The Chamber’s ruling in that instance was based on a number of factors, including the Witness’s age and history of hospitalisation, which was substantiated by considerable documentation. KDZ595 Decision, para. 10.

IV. Disposition

12. 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 thirteenth day of August 2013
At The Hague
The Netherlands

[Seal of the Tribunal]