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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-09-92-T
Date: 7 September 2012
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flüge

Registrar: Mr John Hocking

Decision of: 7 September 2012

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR TESTIMONY
OF WITNESS RM-145 TO BE HEARD VIA VIDEO
CONFERENCE LINK**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 14 August 2012, the Prosecution filed a motion requesting that Witness RM-145 be permitted to testify via video-conference link from Sarajevo, Bosnia and Herzegovina.¹ The Defence responded to the Motion on 29 August 2012.²

2. The Prosecution submits that the Witness suffers from a severe physical disability and has poor general health, and that he is therefore unable to travel to the Tribunal to testify.³ In support thereof, the Prosecution has attached medical documents and a declaration from an investigator with the Office of the Prosecutor (“Declaration”).⁴ The Prosecution argues that the Witness’s evidence is sufficiently important to make it unfair for the Prosecution to proceed without it.⁵ The Witness is expected to provide evidence that relates to the expulsion of non-Serbs from Novi Grad municipality and to scheduled incidents B10.1 and B10.2.⁶ Finally, the Prosecution submits that any cross-examination of the witness will be unaffected by the use of a video-conference link, and that it is in the interests of justice to grant the Motion.⁷

3. The Defence does not object to the Motion, but notes that the documentation received through the Motion’s Confidential Annex B demonstrates that the Witness has recovered due to his medical treatment.⁸ The Defence further notes that the medical documents evidence psychological or psychiatric treatment of the Witness, and that it has not received these medical documents before.⁹ The Defence therefore requests that all medical records pertaining to this treatment be disclosed to the Defence sufficiently in advance, that is at least 45 days prior to the Witness’s testimony (“Request”).¹⁰

4. On 5 September 2012, the Prosecution indicated through an informal communication that it would not file a leave to reply, but that in response to the Defence Request, even though it considered itself to be in compliance with its disclosure obligations, it would disclose additional medical records to the Defence (“Informal Communication”).

¹ Prosecution Motion for Testimony of Witness RM145 to be heard via Video-Conference Link, 14 August 2012 (“Motion”).

² Defence Response to Prosecution Motion for Testimony of Witness RM145 to be heard via Video-Conference Link, 29 August 2012 (“Response”).

³ Motion, paras 1-2, 5-6.

⁴ Motion, Confidential Annex A and Confidential Annex B.

⁵ Motion, para. 7.

⁶ Ibid.

⁷ Motion, para. 8.

⁸ Response, para. 3.

II. 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 a Chamber may order, if consistent with the interests of justice, that proceedings be conducted by way of video-conference link". According to the case-law the Chamber should consider the following factors when determining this requirement is met: (i) the witness must be unable, or have good reasons to be unwilling, to come to the Tribunal; (ii) the testimony of the witness 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.¹¹ However, after considering all relevant factors in a particular case, the ultimate determination to be made when considering a request for video-conference link testimony is whether it would be consistent with the interests of justice.¹²

III. DISCUSSION

6. First, the Chamber notes that the documentation on the medical condition of Witness RM-145 provided by the Prosecution dates back to at least three years ago. However, the Witness's physical disabilities appear to be of a protracted nature, and the Chamber is therefore satisfied that the Witness is unable to travel to the Tribunal to testify. Second, the Chamber has reviewed the issues which the Witness is expected to testify about and considers that the testimony that may be given could be of sufficient importance as to make it unfair for the Prosecution to proceed without it. Finally, the Chamber emphasises that a video-conference link should be regarded as an extension of the courtroom to the location of the Witness, and that its use respects the rights of the Accused to cross-examine and directly confront the Witness while observing his or her reactions, and allows the Chamber to assess the credibility and reliability of the testimony in the same manner as for a Witness in the courtroom.¹³ The Accused will thus not be prejudiced in his right to confront the

⁹ Response, para. 4.

¹⁰ Response, para. 4.

¹¹ *Prosecutor v. 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, 25 June 1996, para. 19; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Reasons for Decision on Urgent Stanišić Defence Motion for Video-Conference Link for Testimony of Witness Leković, 4 November 2011, para. 5; *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Reasons for Decision Granting Prosecution's Motion to Cross-Examine Four Proposed Rule 92 *bis* Witnesses and Reasons for Decision to Hear the Evidence of those Witnesses via Video-Conference Link, 3 November 2009, para. 7.

¹² *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Reasons for Decision on Urgent Stanišić Defence Motion for Video-Conference Link for Testimony of Witness Leković, 4 November 2011, para. 5; *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Reasons for Decision Granting Prosecution's Motion to Cross-Examine Four Proposed Rule 92 *bis* Witnesses and Reasons for Decision to Hear the Evidence of those Witnesses via Video-Conference Link, 3 November 2009, para. 7.

¹³ *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Prosecution Motion for Video-Conference Link for the Testimony of Witness JF-034, 18 June 2010, para. 5.

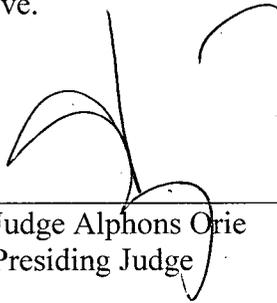
witness. Taking into account all of the above, the Chamber concludes that it is consistent with the interests of justice to hear the testimony of Witness RM-145 via video-conference link.

7. With regard to the Defence Request, the Chamber recalls the Prosecution's Informal Communication. The Chamber therefore will not consider this matter further.

IV. DISPOSITION

8. For the foregoing reasons, pursuant to Rule 81 *bis* of the Rules, the Chamber **GRANTS** the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this seventh day of September 2012
At The Hague
The Netherlands

[Seal of the Tribunal]