



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: 23 September 2011

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: 23 September 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON VIDEO-CONFERENCE LINK FOR THE TESTIMONY OF
ASIM EGRLIĆ AND ATIF DŽAFIĆ**

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 “Prosecution Motion for Video-Conference Link for the Testimony of Witnesses Asim Egrlić (KDZ258) and Atif Džafić (KDZ225)” filed on 20 September 2011 (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, the Office of the Prosecutor (“Prosecution”) seeks leave to call witnesses Asim Egrlić and Atif Džafić (together “Witnesses”) via video-conference link on 29 and 30 September 2011, in accordance with Rule 81 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ The Prosecution submits that due to their health conditions, the Witnesses are both unable to travel to the Tribunal to testify. In Confidential Appendices A to D of the Motion, the Prosecution attaches statements and medical reports describing the medical condition of the Witnesses. It also outlines how and why the evidence of the Witnesses is sufficiently important to the trial and states that it would make it unfair for the Prosecution to proceed without having an opportunity to present it.²

2. On 21 September 2011, the Accused filed the “Response to Motion for Video Link Testimony: Asim Egrlić and Atif Džafić” (“Response”), opposing the Motion. He contends that the medical information provided in the Motion dates back to 2009 and that while giving testimony would be inconvenient for the Witnesses there is nothing to indicate that they are unable to travel to The Hague.³ He does not dispute the importance of their testimony but submits that neither of the Witnesses has indicated that they would refuse to testify in The Hague if required to do so.⁴ He further submits that he would be prejudiced by the inability to confront the witnesses face to face and that the Chamber should ensure all alternatives are explored before authorising testimony via video-conference link.⁵

3. The Prosecution sought leave to reply to the Response on 21 September 2011.⁶ This request was denied by the Chamber on 22 September 2011.⁷

¹ Motion, para. 1.

² Motion, paras. 4, 7.

³ Response, para. 3.

⁴ Response, para. 3.

⁵ Response, paras. 5-6.

⁶ Hearing T. 19348-19349 (21 September 2011).

⁷ Hearing T. 19420-19421 (22 September 2011).

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 which need to be satisfied before a witness is permitted to give his or her 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 considering the first criterion for determining the appropriateness of hearing evidence by video-link, the Chamber has reviewed the information provided by the Prosecution in support of its submission that the Witnesses due to their health conditions are unable to travel to the Tribunal to testify.¹⁰ While the underlying medical documentation dates back to 2009, the Chamber observes that Prosecution investigators contacted the Witnesses and made relevant inquiries in September 2011 and confirmed the continuing nature of their medical conditions and the ongoing impact on their ability to travel.¹¹ Having reviewed the supporting documentation, the Chamber is satisfied that Atif Džafić is unable to come to the Tribunal. However, the Chamber requires more contemporaneous medical documentation before it can determine whether the medical condition of Asim Egrić has improved or whether he is still

⁸ See Decision on Video-Conference Link and Request for Protective Measures for KDZ595, 18 August 2010 (“KDZ595 Decision”), para. 6 and Decision on Prosecution’s Motion for Testimony to be Heard Via Video-Conference Link, 17 June 2010, para. 5 and decisions cited therein.

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 Motion, Confidential Appendices A, C, and D.

¹¹ Motion, Confidential Appendices, A to D.

prevented from travelling as he was in 2009. The Chamber observes that the Motion was filed less than 10 days before the anticipated testimony of the Witnesses and stresses that any future motions for video-conference link testimony should be made in sufficient time for the Registry to make the necessary arrangements and for the Chamber to consider the supporting documentation and request additional material if necessary.

8. In considering the second criterion, the Trial Chamber has reviewed the Prosecution's submissions and the Accused's concession regarding the importance of the evidence of the Witnesses.¹² Having conducted that review, the Chamber finds that the anticipated testimony of the Witnesses is sufficiently important and that it would be unfair to proceed without it.

9. In considering the third criterion, the Chamber notes the existing jurisprudence of the Tribunal, which has found that the use of a video-conference link for the purposes of testimony does not violate the rights of an accused to cross-examine the witness or to confront the witness directly.¹³ The Chamber has previously observed that video-conferences do in fact allow the cross-examining party to observe the witnesses' reactions, and also allows the Chamber to assess the credibility and reliability of the testimony.¹⁴ Accordingly, and bearing in mind the circumstances of the Witnesses and the nature of their expected evidence, the Chamber is satisfied that the Accused will not suffer prejudice as a consequence of them testifying by video-conference link.

IV. Disposition

10. Accordingly, the Trial Chamber, pursuant to Rules 54 and 81 *bis* of the Rules, hereby:

- a) **GRANTS** the Motion in part and **ORDERS** that Atif Džafić be permitted to testify through the use of video-conference link on 29 and 30 September 2011;
- b) **DENIES** without prejudice the Motion with respect to Asim Egrić; and

¹² Motion, paras. 4, 7; Response, para. 4.

¹³ KDZ595 Decision, para. 12; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion for Testimony of K74 to Be Heard Via Video-Link Conference, 16 November 2006, para. 2; *Prosecutor v. Hadžihasanović*, Case No. IT-01-47-T, Decision on Prosecution Motion for Receiving Testimony by Video-Conference Link, 11 March 2004, p. 4.

¹⁴ KDZ595 Decision, para. 12 and decisions cited therein.

- c) **INSTRUCTS** the Registry to take all necessary measures to implement this Decision and inform the Prosecution and Chamber if it is unable to make the arrangements for the video-conference link by 29 September 2011.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-third day of September 2011
At The Hague
The Netherlands

[Seal of the Tribunal]