



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: 17 April 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: 17 April 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR VIDEO LINK TESTIMONY FOR
WITNESS ČEDOMIR KLJAJIĆ**

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 seized of the Accused’s “Motion for Video Link for Čedomir Kljajić (KW226),” filed publicly with a confidential annex on 18 March 2013 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests that the testimony of witness Čedomir Kljajić (“Witness”) be conducted by video link pursuant to Rule 81 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), given the Witness’s unwillingness to testify due to his medical condition.¹ The Accused attaches, in a confidential Annex “A” to the Motion (“Annex”), a declaration from the Accused’s legal adviser cataloguing his attempts to convince the Witness to testify before the Tribunal, as well as a copy of the correspondence sent by the Accused’s legal adviser to the Witness, and a letter from the Witness’s family doctor. The Accused asserts that the Witness’s testimony is sufficiently important because, *inter alia*, the Witness was “the number two person” in the Ministry of the Interior (“MUP”) of the Republika Srpska (“RS”) during the time period covered by the Third Amended Indictment (“Indictment”) and can testify as to whether there was a joint criminal enterprise or a plan to expel Bosnian Muslims from Serb-controlled areas of Bosnia and Herzegovina.² The Accused finally adds that the Office of the Prosecutor (“Prosecution”) will not be prejudiced by the Witness’s testimony being heard via video link.³

2. On 28 March 2013, the Prosecution filed the “Prosecution Response to Karadžić’s Motion for Video Link for Witness Čedomir Kljajić (KW226)” (“Response”) with a confidential Appendix (“Appendix”), opposing the Motion. In the Response, the Prosecution argues that the documentation provided in the Annex to the Motion regarding the Witness’s medical condition is not sufficiently specific or substantiated to assess whether the Witness is able to travel to the Tribunal or has good reasons not to do so.⁴ In the Appendix, the Prosecution stresses the need for specificity and clarity in medical documentation provided in support of a request for testimony via video link and explains why it considers that, given all the circumstances in the present case, neither of these factors has been met.⁵

¹ Motion, paras. 1, 4, 7.

² Motion, para. 5.

³ Motion, para. 6.

⁴ Response, para. 1.

⁵ Response, para. 2; Appendix, para. 4.

II. Applicable Law

3. 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”.

4. 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
- iii. the accused must not be prejudiced in the exercise of his or her right to confront the witness.⁶

5. 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”.⁷

III. Discussion

6. In considering whether the Accused’s request that the testimony of the Witness be conducted by video link, the Chamber will first address criteria (ii) and (iii), as above, and conclude with a discussion of the requirements set out in (i).

7. With regard to the second criterion, the Chamber notes that the Witness served, albeit briefly, as the Under-Secretary for Public Security in the RS MUP during the Indictment period, and is expected to give evidence about, *inter alia*, his interactions with the Accused, including meetings just before the war in which the Accused advocated that both Bosnian Serbs and Bosnian

⁶ See 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.

⁷ 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.

Muslims adhere to the law.⁸ Consequently, the Chamber finds that the anticipated testimony of the Witness is sufficiently important that it would be unfair to the Accused to proceed without it.

8. In relation to the third criterion, the Chamber recalls the jurisprudence of this Tribunal to the effect that the use of video link does not violate the rights of the accused to cross-examine the witness or to confront the witness directly.⁹ The same principle can be applied to the Prosecution in the present case. Furthermore, the Chamber agrees that video link testimony allows the cross-examining party to observe the witnesses' reactions, and also allows the Chamber to assess the credibility of the witnesses and the reliability of their testimony in the same manner as for witnesses who are physically present in the courtroom.¹⁰ Accordingly, the Chamber is satisfied that the Prosecution will not be prejudiced as a consequence of the Witness testifying by video link.

9. Having found that criteria (ii) and (iii), as above, are met in the present case, the Chamber will now proceed with its analysis in relation to the first criterion in order to determine the appropriateness of hearing the Witness's evidence via video link. The Chamber has reviewed the information provided by the Accused in the Annex regarding the Witness's medical condition and his inability to travel to the Tribunal to give evidence, and is concerned by the perfunctory nature of the medical documentation provided. This documentation amounts to a two-sentence letter from the Witness's family practitioner stating the Witness's inability to travel without providing further details.¹¹ The doctor gives no reasons for her opinions and does not provide any test results or medical records that might be able to substantiate her conclusions. Without any specific details as to the Witness's medical condition, the Chamber is unable to assess whether the Witness is in fact unable to come to the Tribunal. Moreover, the Accused has not provided any information that might explain why the Witness has good reasons to be unwilling to travel to The Hague, aside from referring to the unsubstantiated medical problems referred to above.¹² Consequently, the Chamber is not satisfied at this point as to the Witness's inability or unwillingness to testify in person with good cause in this case and will, for this reason, deny the Motion without prejudice.¹³

⁸ Defence Further Revised Rule 65 *ter* Witness List, 26 February 2013. p. 49. The Witness's statement is available on e-court as Rule 65 *ter* 1D07052.

⁹ See KDZ595 Decision, para. 12.

¹⁰ See KDZ595 Decision, para. 12; Decision on Prosecution Motion for Video-Conference Link for Testimony of Witness KDZ084, 1 December 2011, para. 10; Decision on Prosecution's Motion for Testimony to be Heard via Video-Conference Link, 22 July 2010, para. 11.

¹¹ Annex, p. 13.

¹² Annex, p. 5.

¹³ The Chamber notes that in paragraph 6 of the Appendix, the Prosecution has indicated it wishes to rely on jurisprudence from *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT ("*Haradinaj et al.* case"), to support its assertions, and has filed a confidential and *ex parte* motion in relation thereto before the Tribunal's President. On 17 April 2013, the Chamber assigned by the President to decide this motion issued a confidential decision in the

IV. Disposition

10. Accordingly, the Chamber, pursuant to Rule 81 *bis* of the Rules, hereby **DENIES** the Motion without prejudice.

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



Judge O-Gon Kwon
Presiding

Dated this seventeenth day of April 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

Haradinaj et al. case. The Chamber considers that it can rule on the Motion in light of the parties' submissions before it without receiving further submissions from the Prosecution.