



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-05-87-T
Date: 3 August 2007
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 3 August 2007

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC

**DECISION ON ŠAINOVIĆ MOTION REQUESTING TESTIMONY
VIA VIDEO-CONFERENCE LINK**

Office of the Prosecutor

Mr. Thomas Hannis
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Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 “Defence Motion Requesting Testimony via Video-Link Conference”, filed on 9 July 2007 by the Accused Nikola Šainović (“Motion”), requesting that the testimony of Mr. Zoran Mijatović be given by video-conference link, and hereby renders its decision thereon.

1. The Šainović Defence requests that Mr. Zoran Mijatović (“witness”) be allowed to testify via video-conference link pursuant to Rule 71 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), as he is “very fearful for his safety and of the possibility of being compromised or harmed.”¹ The Šainović Defence submits that the witness is therefore unwilling to travel to the Tribunal to testify, although he is apparently willing to travel from Montenegro, where he currently resides, to Belgrade to testify publicly.

2. In its Response to the Motion, filed on 12 July 2007, the Prosecution submits that the proffered reasons as to why the witness fears for his safety are vague and inadequate.² The Prosecution also draws attention to the fact that the Šainović Defence has neither sought any other protective measures nor filed the Motion confidentially, measures which would appear to be the most efficient remedy should any security risk for the witness indeed exist.³ The Prosecution further asserts that the Šainović Defence has failed to show that the testimony of the witness is sufficiently important to make it unfair to proceed without it.⁴

3. On 19 July 2007, the Šainović Defence filed a “Defence Submission Requesting Leave to Reply” and “Reply to ‘Prosecution Response to Nikola Šainović’s Defence Motion Requesting Testimony via Video-Conference Link’” (“Reply”), seeking to further clarify the reasons for its request for a video-conference link to hear the testimony of the witness. The Reply emphasises that the witness’s concerns, which make him unwilling to travel to the Hague to give his testimony, are not related to any aspect of the present case, or the evidence that he will give, but rather to his fear for his safety were he to travel outside of Serbia and Montenegro. The Defence also re-asserts that the witness will give important testimony, which cannot be substituted by the testimony of another witness.

¹ Defence Motion Requesting Testimony via Video-Conference Link, 9 July 2007, para. 6.

² Prosecution Response to Nikola Šainović’s Defence Motion Requesting Testimony via Video-Conference Link, 12 July 2007 (“Response”), para. 7.

³ Response, para. 8.

⁴ Response, para. 6.

4. Before the Trial Chamber will allow testimony to be conducted via video-conference link, it must be satisfied both that the relevant witness is unable or unwilling to come to the Tribunal and that his or her testimony is sufficiently important to make it unfair to proceed without it.⁵ The Chamber considers this legal standard to mean that a witness who is unwilling to come to the Tribunal to give evidence must provide the Chamber with an adequate basis for his unwillingness.⁶

5. The Defence's Reply more clearly sets forth the circumstances in which the witness could reasonably fear for his physical safety outside of Serbia and Montenegro and clarifies that the witness's concerns are unrelated to the substance of his testimony. The Trial Chamber considers that the witness's concerns regarding his security—although they could have been substantiated more fully—constitute, in these particular circumstances, an adequate basis for his unwillingness to travel to the Hague to give evidence in these proceedings.

6. The Trial Chamber notes that the Prosecution argues that a witness to be called by the Lukić Defence, Dušan Mihajlović, will testify about Mr. Tanić, an important witness by the Prosecution's own admission.⁷ However, the Chamber is unwilling at this point in the proceedings to presume that the testimony of the two witnesses will intersect to the extent that it would not be unfair to proceed without the evidence of Mr. Mijatović. Mr. Mihajlović will appear at the very end of the trial and may not be an adequate substitute for the testimony of Mr. Mijatović; nor is it clear that he will specifically rebut Mr. Tanić's testimony in a manner helpful to the Šainović Defence. Moreover, it is reasonable for the Šainović Defence, in these circumstances, to bring evidence to support its challenges to Mr. Tanić as a witness. The Chamber therefore considers that the testimony of Mr. Mijatović is sufficiently important to make it unfair to proceed without it.

7. For the foregoing reasons, pursuant to Rule 126 *bis* of the Rules, the Trial Chamber hereby **GRANTS LEAVE** for the filing of the Reply, and, pursuant to Rule 81 *bis* of the Rules, **HEREBY ORDERS** as follows:

- (a) The testimony of the witness identified as Mr. Zoran Mijatović shall be received through video-link conference in the week of 20 August 2007, or as agreed upon by the parties, provided that the necessary equipment can be made available to the

⁵ *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. Kvočka et al.*, Case No. IT-98-30/1-A, Confidential Appeals Chamber Decision on Prosecution's Request for Testimony by Video-Conference Link and Protective Measures, 2 July 2004, p. 3.

⁶ *Cf. Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-T, Decision on Prosecution's Confidential Motion for Testimony to Be Heard by Video-Conference Link, 21 March 2007, para. 3.

⁷ Response, para. 6.

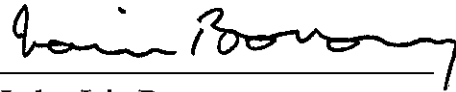
Tribunal. The Registrar is directed to take all steps reasonably necessary to ensure that the video-link conference is established under the following conditions:⁸

- i. The party making the application for video-link testimony shall make arrangements for an appropriate location from which to conduct the proceedings. The venue must be conducive to the giving of truthful and open testimony.
- ii. The safety and solemnity of the proceedings at the location must be guaranteed.
- iii. The non-moving party and the Registry must be informed at every stage of the efforts of the moving party, and they must be in agreement with the proposed location. Where no agreement is reached on an appropriate location, the Trial Chamber shall hear the parties and the Registry and make a final decision.
- iv. The Trial Chamber will appoint a Presiding Officer to ensure that the testimony is given freely and voluntarily. The Presiding Officer will identify the witness and explain the nature of the proceedings and the obligation to speak the truth. The Presiding Officer will inform the witness that he or she is liable to prosecution for perjury in case of false testimony, will administer the taking of the oath, and will keep the Trial Chamber informed at all times of the conditions at the location.
- v. The testimony shall be given in the physical presence only of the Presiding Officer and, if necessary, of a member of the Registry technical staff, unless the Trial Chamber decides otherwise.
- vi. The witness must, through a monitor, be able to see, at various times, the Judges, the Accused, and the questioner. The Judges, the Accused, and the questioner must each be able to observe the witness on their monitor.

⁸ Cf. *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. 22.

- vii. A statement made under solemn declaration by a witness shall be treated as having been made in the courtroom and the witness shall be liable to prosecution for perjury in exactly the same way as if he or she had given evidence at the seat of the Tribunal.

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



Judge Iain Bonomy
Presiding

Dated this third day of August 2007
At The Hague
The Netherlands

[Seal of the Tribunal]