

09-92-T  
D 47661-D 47667  
27 November 2012

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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: 27 November 2012  
Original: English

**IN TRIAL CHAMBER I**

**Before:** Judge Alphons Orie, Presiding  
Judge Bakone Justice Moloto  
Judge Christoph Flügge

**Registrar:** Mr John Hocking

**Decision of:** 27 November 2012

**PROSECUTOR**

v.

**RATKO MLADIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION MOTION FOR TESTIMONY  
OF WITNESS RM-333 TO BE HEARD VIA  
VIDEO-CONFERENCE LINK**

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**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 4 October 2012, the Prosecution filed a motion requesting that the Chamber order that Witness RM-333's testimony be received via video-conference link on 15 January 2013 ("Motion").<sup>1</sup> The Prosecution submits that it is in the interests of justice that Witness RM-333's evidence be heard via video-conference link from his country of residence.<sup>2</sup> It submits that the witness's testimony is sufficiently important to make it unfair to proceed without it and the Accused's right to confront the witness will not be unfairly prejudiced by the use of video-conference link.<sup>3</sup> It further sets out that the witness is unwilling to appear in person to testify in this case due to concerns about his and his family's safety and about losing his business as a result of his testimony.<sup>4</sup> Lastly, the Prosecution submits that the Tribunal cannot otherwise compel the witness's personal appearance under the domestic laws of his country of residence.<sup>5</sup> The Prosecution also requests that the Chamber request the Registry to take all reasonable steps to ensure that a video-conference link is established in accordance with the criteria described in a previous decision of the *Tadić* Trial Chamber.<sup>6</sup>

2. The Defence responded on 18 October 2012, opposing the Motion ("Response").<sup>7</sup> It submits that the witness does not have good reasons for his unwillingness to testify in The Hague.<sup>8</sup> In relation to the witness's concerns about his safety, the Defence points out that the witness has been granted the protective measures of pseudonym and closed session and that the Motion does not explain how these measures would fail to assuage the witness's safety concerns.<sup>9</sup> The Defence further submits that granting the Motion would not be in the interests of justice, noting that the presence of the witness in The Hague is more appropriate for the following reasons: (a) it would allow the parties to secure a better preparation of the examination; (b) it would allow the Chamber to have an immediate impression of his demeanour; (c) it would allow the Chamber to immediately respond to technical difficulties with a view to ensuring an expeditious trial; and (d) it would reinforce the mental perception of seriousness of the proceedings and serve as a deterrent for any

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<sup>1</sup> Prosecution Motion for Testimony of Witness RM-333 to be Heard via Video-Conference Link, 4 October 2012 (Confidential), paras 1, 9.  
<sup>2</sup> Motion, paras 1, 3, 9.  
<sup>3</sup> Motion, paras 1, 6-8.  
<sup>4</sup> Motion, para. 3, Annex A.  
<sup>5</sup> Motion, paras 1, 4.  
<sup>6</sup> Motion, para. 9; see *Prosecutor v. Tadić*, Case no. IT-94-I-T, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link, 26 June 1996, para. 22.  
<sup>7</sup> Defence Response to the Prosecution Motion for Testimony of Witness RM-333 to be Heard via Video-Conference Link, 18 October 2012 (Confidential), para. 2, Conclusion.  
<sup>8</sup> Response, paras 2, 5-8.  
<sup>9</sup> Response, paras 7-8.

inappropriate behaviour by the witness during the testimony.<sup>10</sup> In addition, the Defence submits that travelling to the witness's location in order to conduct preliminary interviews would be an excessive burden in respect of both time and resources.<sup>11</sup> Lastly, the Defence submits that the Accused's right to confront the witness would be unnecessarily undermined by granting the Motion due to the impersonal and distant interaction of video-conference testimony.<sup>12</sup>

## II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law in relation to granting video-conference link testimony, as set out in a prior decision.<sup>13</sup>

## III. DISCUSSION

4. The test for granting video-conference link testimony is whether hearing a witness in this way is consistent with the interests of justice. The particular circumstances of every request will need to be considered. The Chamber has analysed the arguments raised by the parties and will decide whether the requested video-conference link testimony is consistent with the interests of justice.

5. A number of factors raised by the Defence have been addressed by the Chamber in a previous decision.<sup>14</sup> These are: rights of the Accused, Chamber's ability to assess the witness's demeanour, impact on trial expediency due to possible technical delays, and the witness's perception of the seriousness of the proceedings. Furthermore, the Defence has not made any specific submissions in relation to these factors for Witness RM-333. As such, the Chamber finds that these factors do not weigh against granting the Motion.

6. The parties do not appear to dispute the importance of the witness's testimony. Having reviewed the witness's Rule 65 *ter* summary, the Chamber is satisfied that the witness's testimony is sufficiently important to make it unfair to the calling party to proceed without it. This factor weighs in favour of granting the Motion.

7. The Prosecution submits two reasons for the witness's unwillingness to testify personally in The Hague: concerns for his and his family's safety and concerns for losing his business due to

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<sup>10</sup> Response, para. 10.

<sup>11</sup> Response, para. 11.

<sup>12</sup> Response, paras 2, 12.

<sup>13</sup> Decision on Prosecution Motion for Testimony of Witness RM-088 to be Heard via Video-Conference Link, 1 November 2012 ("RM-088 Decision"), para. 3.

<sup>14</sup> RM-088 Decision, paras 6, 9-11.

adverse reactions to his testimony. In relation to concerns for the witness's safety, the Chamber recalls that the witness has been granted full protective measures and that these protective measures continue to apply in the present case pursuant to Rule 75 (F) (i) of the Tribunal's Rules of Procedure and Evidence ("Rules").<sup>15</sup> As such, it remains unclear and the Motion does not elaborate why testifying personally in The Hague would pose a greater risk to the witness's or his family's safety, or to his business, than testifying through video-conference link. The Chamber finds that the witness's reasons for his unwillingness to testify personally in The Hague do not weigh in favour of granting the Motion.

8. The Defence submits that the witness's physical presence in The Hague would enhance the parties' ability to prepare for his examination. It adds that travelling to the witness's location for such preparation would be an excessive burden. While circumstances may exist that would favour that a witness testifies personally in The Hague in order to enhance the parties' ability to prepare for his or her examination, such circumstances have not been specified by the Defence in relation to Witness RM-333, nor can the Chamber see any such reason. In particular, while the Defence expresses itself on the excessive burden travelling to the witness's location *would* represent, it does not indicate that it considers such travelling necessary for preparing the witness's cross-examination. Under these circumstances, the Chamber finds that this factor, as argued by the Defence, does not weigh against granting the Motion.

9. The Prosecution argues that the Tribunal does not have the power to compel the witness to testify personally in The Hague due to the domestic laws of the witness's country of residence. According to the Prosecution, this is a factor to consider when determining whether to grant the Motion. The Chamber notes that it can issue subpoenas to witnesses, ordering them to testify. Further, states have an obligation to cooperate with the Tribunal under Article 29 of the Statute, for example by way of serving a subpoena. Despite this, securing a person's presence in The Hague, whether as a witness or an accused of contempt of court (in case an indictment is issued for failing to comply with a subpoena), is not always without practical problems and may take considerable time. The Chamber further notes that the witness remains willing to assist the Chamber in its truth-finding mandate by providing testimony, albeit only through the use of video-conference link. The Chamber notes that the Motion indicates the witness's strong conviction, as opposed to a mere

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<sup>15</sup> See *Prosecutor v. Popović et al.*, Case No. IT-05-88-A, Decision on Urgent Prosecution Motion for Additional Protective Measures for Witness [RM-333], 10 April 2012 (Confidential). The Chamber notes that the dispositive part of this decision orders that "the Witness shall give evidence in closed session in the *Karadžić* case", but interprets the decision, in particular due to the Appeals Chamber's finding that 'circumstances necessitate an augmentation', as an augmentation of protective measures rather than a mere variation for the *Karadžić* case.

preference, against testifying personally in The Hague. Under these circumstances, the Chamber finds that this factor weighs in favour of granting the Motion.

10. Taking all of the above into consideration, in particular the witness's willingness to provide testimony to the Chamber, and noting that the Prosecution only exceptionally requests the Chamber to order testimony via video-conference link, the Chamber concludes that it is consistent with the interests of justice to order video-conference link testimony for Witness RM-333.

11. In relation to the Prosecution's request asking the Chamber to direct the Registry to follow criteria established in a decision by the *Tadić* Trial Chamber in 1996, the Chamber considers that such an instruction is unnecessary as the Registry has substantial experience and is fully capable of organizing a video-conference link that satisfies the standards required by this Chamber.

**IV. DISPOSITION**

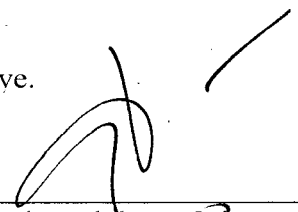
12. For the foregoing reasons, pursuant to Rule 81 *bis* of the Rules, the Chamber

**GRANTS** the Motion;

**DENIES** the Prosecution's request to direct the Registry to follow criteria established by the *Tadić* Trial Chamber in 1996; and

**REQUESTS** the Registry to communicate with the witness's country of residence in an effort to find an appropriate location for the video-conference link and to take all other necessary measures to ensure that Witness RM-333 can testify via video-conference link on 15 January 2013 from his country of residence.

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

  
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Judge Alphons Orie  
Presiding Judge

Dated this Twenty-seventh day of November 2012  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**