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**UNITED
NATIONS**



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-08-91-T
Date: 2 October 2009
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 2 October 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ & STOJAN ŽUPLJANIN

PUBLIC

**DECISION ON PROSECUTION MOTION
FOR TESTIMONY OF WITNESSES ST161 AND ST203
TO BE HEARD VIA VIDEO-CONFERENCE LINK**

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Igor Pantelić and Mr. Dragan Krgović for Stojan Župljanin

TRIAL CHAMBER II (“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”);

BEING SEISED of the “Prosecution’s re-submission of its motion for testimony to be heard via video-conference link with annex A”, filed confidentially on 30 September 2009, (“Motion”), whereby the Prosecution requests that the testimony of ST161 and ST203 be heard via video-conference link pursuant to Rule 81 *bis* of the Rules of Procedure and Evidence (“Rules”), from the Sarajevo and Belgrade Field Offices, respectively;

RECALLING that the Prosecution initially filed the motion on 29 September 2009 and that on the same date the Trial Chamber, finding that it was unable to assess the motion as the documents attached in support of it were not submitted in an official language of the Tribunal, rejected the motion without prejudice to a subsequent application and documentation in an official language of the Tribunal;¹

NOTING that the re-filed Motion does attach supporting medical records in one of the official languages;²

RECALLING that on 1 October 2009 the Trial Chamber informed the parties that in order to make an assessment of whether or not a witness, whose testimony is sought to be heard pursuant to Rule 81 *bis*, is fit to travel, the Trial Chamber would be assisted by a medical certificate addressing this issue;³

NOTING that on 2 October 2009 the Prosecution filed a medical certificate in BCS and English, which provides that ST203 “[i]n his current and established medical condition [...] is incapable of any travel” (“medical certificate”);⁴

NOTING the Prosecution submission that it has “provisionally” scheduled the testimony of ST161 and ST203 on 8-9 October 2009 and 12-13 October 2009, respectively, stating that it understands “that Registry requires a minimum of five working days after the issuance of any Order in order to establish a video-conference link”

¹ Prosecution’s motion for testimony to be heard via video-conference link, with annex A, filed confidentially on 29 September 2009; Order on Prosecution’s motion for testimony to be heard via video-conference link, with annex A, 29 September 2009.

² Prosecution’s resubmission of its motion for testimony to be heard via video-conference link, with annex A filed confidentially on 30 September 2009.

³ Hearing, 1 Oct 2009, T. 692.

⁴ Prosecution’s addendum to its motion for testimony to be heard via video-conference link, with Annex A, 2 Oct 2009.

NOTING the Prosecution's oral amendment to those submissions during the hearings of 1 and 2 October 2009 indicating (1) that, according to Registry internal guidelines and based on information from the court officer,⁵ the Registry requires ten working days following an order granting testimony to be heard pursuant to Rule 81 *bis*,⁶ and (2) that the video-link for ST203 is now requested for 13 October 2009;⁷

NOTING that at the hearing on 2 October 2009 the Defence of Mićo Stanišić and the Defence of Stojan Župljanin stated that they do not object to ST203 being heard via video-conference link on 13 October 2009;

CONSIDERING that Prosecution has, on the basis of the documents attached to the Motion and the medical certificate, satisfied its burden of demonstrating that it is in the interest of justice to hear the testimony of ST203 via video-conference link on 13 October 2009;

CONSIDERING that the Trial Chamber is not satisfied that the Prosecution has established that it is both necessary and feasible to hear the testimony of ST161 via video-conference on 8-9 October 2009;

CONSIDERING that hearing testimony by video-conference link does not violate the rights of the accused to cross-examine the witness and to confront the witness directly and that according to the jurisprudence of the Tribunal, testimony of witnesses by video-conference link should be given as much probative value as testimony presented in the courtroom;⁸

PURSUANT TO Rules 54 and 81 *bis* of the Rules;

GRANTS the Motion **IN PART**;

ORDERS:

- a. that ST203 shall testify via video-conference link from the Belgrade Field Office on 13 October 2009, or at a date to be decided should the witness order be amended,
- b. the Registrar to take all reasonable steps to ensure that the video-conference link is established for 13 October 2009 and to advise the Trial Chamber should that not be possible

⁵ Motion, paras 1, 2, 5.

⁶ Hearing, 1 Oct 2009, T. 670-671.

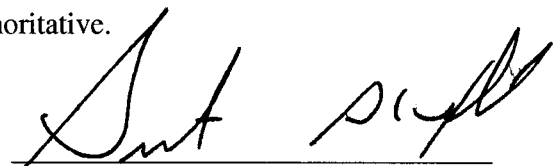
⁷ Hearing, 2 Oct 2009, official page number not final at the time of issuance of this decision.

⁸ *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-T, Decision on Prosecution motion for receiving testimony by video-conference link, 11 March 2004; *Prosecutor v. Milutinović et al*, Case No. IT-99-37-T, Decision on Prosecution motion for testimony of K58 to be heard via video-link conference, 1 November 2006.

- c. the Registrar to appoint a Presiding Officer to ensure that the testimony is given freely and voluntarily;
- d. the Presiding Officer to identify the witness and explain the nature of the proceedings and the obligation to speak the truth, to inform the witness that he or she is liable to prosecution for perjury in case of false testimony, to administer the taking of the oath, and to keep the Trial Chamber informed at all times of the conditions at the location;
- e. that the testimony of ST203 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;
- f. that the witness, using a monitor, shall be able to see, at various times, the Judges, the Accused, and the questioner and that the Judges, the Accused, and the questioner must be able to observe the witness on their monitors;
- g. that any statement made under solemn declaration by the witness shall be treated as having been made in the courtroom and that 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; and

DISMISSES the Motion in respect of ST161, without prejudice to the timely filing of a future reasoned application on this matter.

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



Judge Burton Hall
Presiding

Dated this second day of October 2009
At The Hague
The Netherlands

[Seal of the Tribunal]