



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 19 April 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution request for video-conference testimony for W04305 and related request'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Articles 23(1) and 40(2) of the Law,¹ and Rules 80, 141(1) and 144 of the Rules,² and noting the Registry Practice Direction on Video Links,³ the Specialist Prosecutor's Office ('SPO') requests the Trial Panel to authorise the testimony of W04305 to take place by video-conference from a government building or other appropriate location in [REDACTED],⁴ to be confirmed with the relevant authorities ('Request').

2. Subject to, *inter alia*, Defence cross-examination estimates,⁵ the outcome of this request, and related Registry confirmation, the SPO intends to call W04305 the week of 27 May 2024. In light of W04305's personal circumstances, video-conference testimony is needed to ensure the witness's security and well-being, and to facilitate the testimony in an expeditious manner. Video-conference testimony is therefore appropriate and would not result in undue prejudice to the Accused as the Defence will be fully able to cross-examine the witness.

3. The SPO, while mindful of its responsibility to ensure that a witness testifies during ordinary courtroom hours,⁶ also exceptionally requests a modified sitting schedule, considering the requested video-link location and the witness's well-being.

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Registry Practice Direction on Video Links, KSC-BD-23/COR, 17 July 2020 as corrected on 5 August 2020 ('Practice Direction').

⁴ The SPO anticipates, based on past consultation with the relevant authorities, that the video link location would be in [REDACTED].

⁵ 26 April 2024 is the deadline for the Defence to provide, *inter alia*, its cross-examination estimates for W04305. *See* Decision on Selimi Defence Request for Extension of Time to Respond to F02195, F02196, F02204, KSC-BC-2020-06/F02209, 28 March 2024.

⁶ Decision on Prosecution Request for Video-Conference Testimony for W04448 and Related Matters, KSC-BC-2020-06/F01851, 11 October 2023, Confidential ('W04448 Decision'), para.17.

II. SUBMISSIONS

4. Rules 141(1) and 144 expressly permit the testimony of witnesses to be given by means of video-conference, establishing three conditions that must be satisfied in such cases: (i) the technology must permit the witness to be properly examined by the Parties and the Panel, at the time they are testifying; (ii) the venue chosen must be conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witnesses; and (iii) the measure must not be prejudicial to or inconsistent with the rights of the accused. No additional criteria are warranted.⁷

5. Video-link testimony should not be considered only on an exceptional basis.⁸ When considering whether to permit video-conference testimony, the Panel may consider a number of factors, such as the location, personal and health situation, availability and security of the witness, as well as the complexity and duration of any logistical travel and other arrangements to be made.⁹ These factors may also include procedural considerations, including the efficient conduct of the proceedings.¹⁰

6. W04305 is a Rule 154 witness whose evidence relates to crimes alleged to have occurred in and around [REDACTED], specifically W04305's detention and mistreatment by the KLA in 1998. W04305 has [REDACTED], and three of four Defence teams in this case did not object to the admission of his evidence under Rule

⁷ Public Redacted Version of Decision on Specialist Prosecutor's request for video-conference testimony for TW4-04, TW4-10 and TW4-11, KSC-BC-2020-04/F00482/RED, 13 April 2023 ('*Shala* Decision'), para.13.

⁸ Decision on Prosecution Request for Video-Conference Testimony and Special Measure for W04337, KSC-BC-2020-06/F01558, 26 May 2023, Strictly Confidential and *Ex Parte* ('Decision F01558'), para.16; Decision on Prosecution Request for Video-Conference Testimony for W03827, KSC-BC-2020-06/F01776, 8 September 2023, Confidential ('Decision F01776'), para.12.

⁹ Decision F01776, KSC-BC-2020-06/F01776, para.12; Decision F01558, KSC-BC-2020-06/F01558, para.16. See also KSC-BC-2020-07, Transcript of Hearing, 14 January 2022, p. 3034, lines 6-10.

¹⁰ *Shala* Decision, KSC-BC-2020-04/F00482/RED, para.14.

153.¹¹ However, considering that it referred extensively to the roles and actions of an alleged JCE member, the Panel exercised its discretion not to admit W04305's evidence under Rule 153, without prejudice to, *inter alia*, any Rule 154 application.¹² This application is currently pending.¹³

7. W04305 – who has confirmed his availability and willingness – is currently anticipated to testify the week of 27 May 2024. Due to [REDACTED], W04305 does not have valid travel documents, which would enable him to return to his place of residence. Travel to The Hague for testimony could therefore result in separation from his family and long-time place of residence, and pose security risks, [REDACTED]. Additionally, W04305 is employed in [REDACTED]. He is concerned that, if he were to be absent from work for the time needed to travel to The Hague for testimony, he would be at risk of being replaced [REDACTED].

8. In these circumstances, and considering the scope and nature of his evidence, and the anticipated, limited length of his testimony,¹⁴ video-conference is most consistent with minimising the risk of harm and facilitating the witness's truthful and complete testimony. For these reasons, participating via video-link will improve the quality of W04305's evidence, and ensure his physical and psychological well-being.¹⁵

9. Granting the Request would also not be prejudicial to or inconsistent with the rights of the Accused.¹⁶ The available technology allows for W04305 to be examined under the same conditions as he would be in the courtroom. He would testify before

¹¹ Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W04016, W04019, W04044, W04305, W04361, W04722, W04816, W04850, W04851, and W04852 pursuant to Rule 153, KSC-BC-2020-06/F02111, 8 February 2024, Confidential ('Rule 153 Decision'), para.40.

¹² Rule 153 Decision, KSC-BC-2020-06/F02111, paras 42-43, 93(c).

¹³ Prosecution motion for admission of evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 pursuant to Rule 154, KSC-BC-2020-06/F02204, 27 March 2024, Confidential.

¹⁴ See para.6 above (noting that three of four Defence teams did not object to Rule 153 admission) and para.10 below (noting the limited examination estimates known at this time).

¹⁵ See *Shala* Decision, KSC-BC-2020-04/F00482/RED, para.18; Decision F01776, KSC-BC-2020-06/F01776, para.14.

¹⁶ See Decision F01776, KSC-BC-2020-06/F01776, para.15.

the Panel, after taking his solemn declaration, in real-time, in the presence of the Parties and Victims' Counsel, who will be able to question him as if he was physically present in the courtroom. The Panel will also be able to observe his demeanour and assess his credibility.

10. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) W04305 is anticipated to appear the week of 27 May 2024; (ii) the expected duration of direct examination of W04305 is no more than one hour;¹⁷ (iii) the SPO requests W04305 to appear via video-conference from an appropriate location in [REDACTED],¹⁸ to be confirmed with the relevant authorities; (iv) W04305 has protective measures, including pseudonym, and face and voice distortion; (v) the SPO is not aware of any special needs; and (vi) W04305 will testify in Albanian. The SPO remains available should the Registry require any further information.

11. Finally, while mindful of its responsibility to ensure that a witness testifies during ordinary courtroom hours,¹⁹ the SPO exceptionally requests a modified sitting schedule, given the [REDACTED] time difference between the proposed video-link location²⁰ and The Hague, and to ensure the witness's well-being and his ability to give accurate and structured testimony. The SPO defers to the Panel as to the appropriate sitting schedule, noting that it is dependent on, *inter alia*: (i) Registry confirmation that a modified schedule can be practically accommodated; (ii) confirmation by the relevant authorities of the earliest possible start time at the video-link location; and (iii) the anticipated testimony length.²¹

¹⁷ Victims' Counsel has requested an estimated 15 minutes. See Victims' Counsel's Twelfth Notification of Wish to Cross-Examine Witnesses, KSC-BC-2020-06/F02215, 2 April 2024, Confidential, para.6 (#10). Defence estimates are due 26 April 2024. See fn.5 above.

¹⁸ As noted above, the SPO anticipates that the video-link location would be in [REDACTED].

¹⁹ W04448 Decision, KSC-BC-2020-06/F01851, para.17.

²⁰ See para.1 and footnote 4 above.

²¹ As noted above, the Defence's deadline to submit cross-examination estimates is 26 April 2024. See fn.5 above.

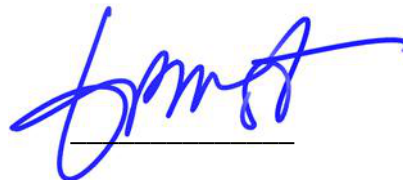
III. CLASSIFICATION

12. This filing is confidential pursuant to Rule 82(3) since it contains personal information concerning W04305 and to give effect to existing protective measures.

IV. RELIEF REQUESTED

13. For the reasons set out above, the SPO requests that the Panel grant the Request for video-conference testimony and a modified sitting schedule.

Word Count: 1459



Kimberly P. West

Specialist Prosecutor

Friday, 19 April 2024

At The Hague, the Netherlands.