



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

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Public Redacted Version of 'Prosecution request for video-conference testimony for W00992 and W04824 and related request'

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I. INTRODUCTION

1. Pursuant to Article 40(2) of the Law,¹ and Rules 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 W00992 and W04824 to take place by video-conference from [REDACTED] ('Request').⁴

2. W00992 and W04824 are reserve witnesses, including for the current evidentiary block, and based on current estimates, the SPO expects that their testimony may occur as early as 6 June 2024 if examinations of scheduled witnesses proceed faster than expected.⁵ Accordingly, the SPO requests an expedited briefing schedule.

3. In light of the witnesses' personal circumstances and status as reserve witnesses, who may be called at short notice, video-conference testimony is needed to ensure the witnesses' health 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.

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

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 Based on preliminary consultations and in line with the agreed practice, the facilities [REDACTED] are likely to be made available for testimony by video-conference link.

⁵ Prosecution motion for admission of evidence of Witnesses W00992, W01336, and W04824 pursuant to Rule 154 and related request, KSC-BC-2020-06/F02319, 16 May 2024, Confidential ('16 May 2024 SPO Motion'), para.1.

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.⁶

5. Video-link testimony should not be considered only on an exceptional basis.⁷ 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.⁸ These factors may also include procedural considerations, including the efficient conduct of the proceedings,⁹ and a degree of flexibility is warranted in particular regarding matters of scheduling for reserve witnesses, given their nature.¹⁰

A. W00992

6. W00992 is a Rule 154 crime-base witness, whose evidence primarily relates to crimes alleged to have been perpetrated by the KLA [REDACTED]. W04824 was

⁶ 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;

⁷ Decision on Prosecution Request for Video-Conference Testimony for W04305 and Related Request, KSC-BC-2020-06/F02308, 15 May 2024, Confidential ('Decision F02308'), para.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.

⁸ Decision F02308, KSC-BC-2020-06/F02308, para.8; Decision 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.

⁹ *Shala* Decision, KSC-BC-2020-04/F00482/RED, para.14.

¹⁰ KSC-BC-2020-06, Oral Order authorizing Witness W04586's testimony to take place via video-conference, 14 July 2023, Transcript, pp.5802-5803.

notified as a reserve witness for the current evidentiary block.¹¹ His evidence is the subject of a pending Rule 154 Request.¹² [REDACTED].¹³

7. W00992 confirmed his availability to testify and has been notified as a reserve witness for, *inter alia*, the week of 3 June 2024.¹⁴ W00992's testimony date is contingent upon possible, but uncertain, developments in other witnesses' testimonies, which might require swift and unexpected adjustments. This places a premium on flexibility and readiness. Allowing W00992 to testify remotely from a location well-suited for the purpose, will enable his appearance at short notice, avoiding undue travel and logistical arrangements, which may unnecessarily and disproportionately disrupt the witness's personal life.

8. Granting this Request would also be conducive to W00992's physical and psychological well-being and security. W00992 [REDACTED]. During his last contact with the SPO on [REDACTED], he expressly indicated that, [REDACTED].

9. For these reasons, participation of W00992 via video-link will ensure the required scheduling flexibility, the expediency and efficiency of the proceedings, and W00992's security and physical and psychological well-being.¹⁵

10. Granting the Request would also not be prejudicial to or inconsistent with the rights of the Accused.¹⁶ The available technology allows for W00992 to be examined under the same conditions as he would be in the courtroom. He would testify before 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

¹¹ ANNEX 2 to Prosecution submission of list of witnesses for 22 April to 18 July 2024, KSC-BC-2020-06/ F02195/A02, 22 March 2024, Confidential, ('F02195/A02 Annex'), pp.19-22.

¹² 16 May 2024 SPO Motion, KSC-BC-2020-06/F02319, paras 17-23.

¹³ See [REDACTED]

¹⁴ 16 May 2024, KSC-BC-2020-06/F02319, para.1.

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

¹⁶ See Decision F02308, para 11; Decision F01776, para.15.

present in the courtroom. The Panel will also be able to observe his demeanour and assess his credibility.

11. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) W00992 is anticipated to appear the week of 3 June 2024; (ii) the expected duration of direct examination of W00992 is no more than one hour; (iii) the SPO requests W00992 to appear via video-conference from [REDACTED]; (iv) W00992 [REDACTED]; (v) the SPO is not aware of any special needs for the witness's testimony; and (vi) W00992 [REDACTED]. The SPO remains available should the Registry require any further information.

B. W04824

12. W04824 is a Rule 154 crime base witness, whose evidence relates primarily to crimes alleged to have been perpetrated by the KLA [REDACTED]. W04824 was notified as a reserve witness for the evidentiary block of 21 May to 6 June 2024.¹⁷ His evidence is the subject of a pending Rule 154 Request.¹⁸

13. The three conditions set out by Rules 141(1) and 144 for granting video-conference testimony have been met for W04824.¹⁹

14. First, while in-court testimony is preferred, the video-conference technology in use will allow a proper examination of W04824. The witness will take the solemn declaration and testify in real-time in the presence of the Parties and Panel who will be able to question the witness, observe the witness's demeanour, and assess the witness's credibility as if W04824 were physically present in the courtroom. Second, the venue chosen for the video-conference will be conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity

¹⁷ ANNEX 2 to Prosecution submission of list of witnesses for 22 April to 18 July 2024, KSC-BC-2020-06/ F02195/A02, 22 March 2024, Confidential, ('F02195/A02 Annex'), pp.19-22.

¹⁸ 16 May 2024 SPO Motion, KSC-BC-2020-06/F02319.

¹⁹ See para.4 above.

and privacy of the witness.²⁰ Third, because there is little, if any, qualitative difference between examining a witness in the courtroom and examining them via video-conference,²¹ allowing W04824 to testify via videoconference will not be prejudicial to or inconsistent with the rights of the Accused who will be able to properly cross-examine and confront W04824. Further, as also noted above, a degree of flexibility is warranted in particular regarding matters of scheduling for reserve witnesses, given their nature.²²

15. Considering W04824's status as a reserve witness, which requires his availability at short notice and makes his actual testimony date contingent upon many factors, including the progress of other witnesses' testimony, video-conference is the most appropriate procedure. Participating via video-link will not only facilitate expeditious proceedings, but will also ensure W04824's physical and psychological well-being, improving the quality of his evidence and facilitating truthful and open testimony.²³ There are risks to the witness's health and well-being if he were to travel to The Hague, particularly at short notice, and due to the flexibility required of reserve witnesses, for period(s) of uncertain duration. W04824 [REDACTED]. In these circumstances, the combined benefits to expeditious proceedings and witness well-being and health justify video-conference testimony.

16. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) W04824 may appear during the 21 May to 6 June 2024 evidentiary

²⁰ The venue has proven to be appropriate with regard to [REDACTED]. See Decision on Prosecution Request for Video-Conference Testimony for [REDACTED].

²¹ ICC, *Prosecutor v. Said*, ICC-01/14-01/21, Decision on the Use of Audio-Video Link Technology, 4 August 2022, paras 13-14. See also IRMCT, *Prosecutor v. Kabuga*, MICT-13-38-T, Decision on Prosecution Motion for Video-Conference Link, 12 October 2022, paras 8-11 (setting out the evolution of the ICTY, ICTR, and IRMCT Rules, resulting in the current framework where 'there is no principle [...] that witnesses first and foremost must appear directly in court').

²² KSC-BC-2020-06, Oral Order authorizing Witness W04586's testimony to take place via videoconference, 14 July 2023, Transcript, p.5802-5803.

²³ See *Shala* Decision, KSC-BC-2020-04/F00482/RED, para.18; Decision F01776, KSC-BC-2020-06/F01776, para.14; Oral Order authorising Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, p. 13064, lines 2-5.

block, as early as 6 June 2024; (ii) the expected duration of direct examination of W04824 is one hour;²⁴ (iii) the SPO requests W04824 to appear via video-conference from [REDACTED]; (iv) [REDACTED] the witness may require breaks during testimony, but the SPO is not aware of any other special needs during his testimony; and (v) W04824 [REDACTED].

III. CLASSIFICATION

17. This filing is confidential pursuant to Rule 82(3) since it contains personal information concerning the witnesses.

IV. RELIEF REQUESTED

18. For the reasons set out above, the SPO requests that the Panel (i) order an expedited briefing schedule; and (ii) grant the Request for video-conference testimony for W00992 and W04824.

Word Count: 1896



Kimberly P. West

Specialist Prosecutor

Wednesday, 22 May 2024

At The Hague, the Netherlands.

²⁴ See KSC-BC-2020-06/F02319, 16 May 2024, Annex 3, p.2.