



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: 12 June 2024

Language: English

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Public redacted version 'Prosecution request for video-conference testimony for
W04445 and W04501'

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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 that the Trial Panel authorise the testimony of W04445 and W04501 to take place by video-conference from [REDACTED] ('Request').

2. In light of the witnesses' personal circumstances and the flexibility required for reserve witnesses, video-conference testimony will ensure the witnesses' health and well-being, and 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 witnesses.

3. Due to, *inter alia*, the sitting schedule ordered for [REDACTED]'s testimony, the SPO has identified W04445 and W04501 as suitable reserve witnesses for the upcoming evidentiary block.⁴ Considering that the block commences on 24 June 2024⁵ and in order to facilitate the necessary logistical arrangements, the SPO requests an expedited briefing schedule.

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 In view of the sitting schedule for [REDACTED]'s testimony and as directed by the Panel, the SPO will notify, by the ordered deadline, the updated order of witnesses for this block. *See* Email from Panel to Parties and participants dated 6 June 2024 at 17.03.

⁵ The SPO anticipates that, in light of the revised schedule for this block, W04445 may need to be called as early as 27 June 2024, if examinations of scheduled witnesses that week proceed faster than expected. W04501 may be required as early as 4 July 2024.

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.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 flexibility warranted for reserve witnesses, given their nature.¹⁰

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 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; Oral Order authorising Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, p.13063.

⁸ Decision F01776, KSC-BC-2020-06/F01776, para.12; Decision F01558, KSC-BC-2020-06/F01558, para.16; Oral Order authorising Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, pp.13063-13064.

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

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

A. W04445

6. W04445 is a Rule 154 crime-base witness whose evidence relates to crimes alleged to have occurred in [REDACTED].

7. W04445 was initially notified as a witness for the evidentiary block of 15 January to 4 April 2024,¹¹ and has been identified as a suitable reserve witness for this evidentiary block. While W04445 is willing and available to testify, the witness stated that he is not able to travel by plane due to his health condition. W04445 is of advanced age and suffers from serious [REDACTED] issues, including [REDACTED].

8. In these circumstances, and considering his reserve witness status, which renders the exact timing for W04445's testimony uncertain and dependent on the progress of other witnesses' testimony, video-conference is most consistent with minimising the risk of harm and facilitating the witness's truthful and open testimony. For these reasons, participating via video-link will improve the quality of W04445's evidence, and ensure his physical and psychological well-being.¹²

9. Granting the Request would also not be prejudicial to or inconsistent with the rights of the Accused.¹³ The available technology allows for W04445 to be examined under the same conditions as he would be in the courtroom.¹⁴ 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 1 to Prosecution submission of list of witnesses for 15 January to 4 April 2024, KSC-BC-2020-06/F02007/A01, 14 December 2024, Confidential, pp. 73-75.

¹² 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; Decision on URGENT Prosecution Motion for Admission of Evidence of W02486 Pursuant to Rule 154 and Request for Video-Conference Testimony (F02270), KSC-BC-2020-06/F02281, 3 May 2024, Confidential, para.23.

¹³ See Decision F01776, KSC-BC-2020-06/F01776, para.15; Oral Order authorising Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, p.13064, lines 6-9.

¹⁴ See also para.**Error! Reference source not found.** above.

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) W04445 is a reserve witness for the upcoming evidentiary block and may appear as early as 27 June 2024;¹⁵ (ii) the expected duration of direct examination of W04445 is no more than 1 hour; (iii) the SPO requests W04445 to appear via video-conference from [REDACTED]; (iv) the witness has in-court protective measures, including use of a pseudonym and face/voice distortion; (v) due to his advanced age, level of education, and health conditions, the witness is anticipated to require reading assistance and may require breaks during testimony; and (vi) W04445 will testify in Albanian. The SPO remains available should the Registry require any further information.

B. W04501

11. W04501 is a Rule 154 crime-base witness whose evidence relates to crimes alleged to have occurred [REDACTED].

12. As indicated above, W04501 has been identified as a suitable reserve witness for the upcoming evidentiary block.¹⁶ While W04501 is willing and available to testify, [REDACTED]. Any extended absence might thus [REDACTED], in addition to creating additional stress due to his [REDACTED]. When considered in conjunction with his reserve status, which renders the precise timing for W04501's testimony uncertain and dependent on the progress of other witnesses' testimony, video-conference is most consistent with minimising the risk of harm to the witness and facilitating the witness's truthful and open testimony. For these reasons, participating

¹⁵ See also fn.5 above.

¹⁶ A Rule 154 application for W04501 and the information required by paragraphs 73-74 of the Order on the Conduct of Proceedings (KSC-BC-2020-06/F01226/A01) will be submitted in the coming days to enable resolution by 4 July 2024, which is the earliest he is anticipated to testify.

via video-link will improve the quality of W04501's evidence, and ensure his psychological well-being.¹⁷

13. Granting the Request would also not be prejudicial to or inconsistent with the rights of the Accused.¹⁸ The available technology allows for W04501 to be examined under the same conditions as he would be in the courtroom.¹⁹ 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 present in the courtroom. The Panel will also be able to observe his demeanour and assess his credibility.

14. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) W04501 is a reserve witness for the upcoming evidentiary block and may appear as early as 4 July 2024; (ii) the expected duration of direct examination of W04501 is no more than 1 hour; (iii) the SPO requests W04501 to appear via video-conference from [REDACTED]; (iv) the witness has in-court protective measures, including use of a pseudonym and face/voice distortion; (v) the SPO is unaware of any special measures that will be required for his testimony; and (vi) W04501 will testify in Albanian. The SPO remains available should the Registry require any further information.

III. CLASSIFICATION

15. This filing is confidential pursuant to Rule 82(3) since it contains personal information concerning W04445 and W04501.

¹⁷ 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; Decision on URGENT Prosecution Motion for Admission of Evidence of W02486 Pursuant to Rule 154 and Request for Video-Conference Testimony (F02270), KSC-BC-2020-06/F02281, 3 May 2024, Confidential, para.23.

¹⁸ See Decision F01776, KSC-BC-2020-06/F01776, para.15; Oral Order authorising Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, p.13064, lines 6-9.

¹⁹ See also para.**Error! Reference source not found.** above.

IV. RELIEF REQUESTED

16. For the reasons set out above, the SPO requests: (i) an expedited briefing schedule; and (ii) that the Panel authorise video-conference testimony for W04445 and W04501.

Word Count: 1727



Kimberly P. West
Specialist Prosecutor

Wednesday, 12 June 2024

At The Hague, the Netherlands.