



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 of W04600 and W04366'

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I. INTRODUCTION

1. Pursuant to Articles 23(1) and 40(2) of the Law,¹ Rules 141(1) and 144 of the Rules,² and noting the Practice Direction on Video Links,³ the Specialist Prosecutor's Office ('SPO') requests the Trial Panel to authorise the testimony of W04600 and W04366 via video-conference from the [REDACTED] ('Request').

2. W04600 and W04366 are witnesses for evidentiary blocks between 19 August and 7 November 2024.⁴ In light of the witnesses' health and personal circumstances, video-conference testimony is needed to ensure their physical and psychological well-being. 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.

II. SUBMISSIONS

3. 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

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 on Video Links').

⁴ Annex 1 to Prosecution submission of list of witnesses for 19 August to 7 November 2024 with confidential Annex 1, KSC-BC-2020-06/F02451/A01, 16 July 2024, confidential, pp.32, 168. W04600 is tentatively anticipated to testify in the block commencing [REDACTED] and W04366 is tentatively anticipated to testify in the block commencing [REDACTED]. If necessary, any changes in the order of appearance will be notified at the earliest opportunity.

must not be prejudicial to or inconsistent with the rights of the accused. No additional criteria are warranted.⁵

4. Video-link testimony should not be considered only on an exceptional basis.⁶ 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, and the complexity and duration of any logistical travel and other arrangements to be made.⁷ These factors may also include procedural considerations, including the efficient conduct of the proceedings.⁸

A. W04600

5. W04600's evidence relates primarily to the structure of units operating and crimes alleged to have been committed in and around [REDACTED].⁹

6. Video-conference is necessary to ensure the witness's physical and psychological well-being. W04600 is affected by a number of serious ailments that severely restrict his mobility and ability to travel, including [REDACTED]. He is also fatigued very easily, especially when travelling by plane,¹⁰ and suffers from a [REDACTED]. As a consequence, W04600's ability to move, let alone travel, is severely restricted, and he requires assistance for the most basic activities in his daily life.

⁵ 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.

⁶ 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.

⁷ Decision F01776, KSC-BC-2020-06/F01776, para.12; Decision F01558, KSC-BC-2020-06/F01558, para.16.

⁸ *Shala* Decision, KSC-BC-2020-04/F00482/RED, para.14.

⁹ A Rule 154 application has been submitted in relation to W04600. *See* Prosecution motion for admission of evidence of Witnesses W02135, W03871, W04295, W04372, W04590, W04600, W04735, W04737, and W04868 pursuant to Rule 154 and related requests with confidential Annexes 1-9, KSC-BC-2020-06/F02450, 16 July 2024, confidential.

¹⁰ [REDACTED].

7. W04600 has expressed his willingness to testify, but he requested, due to his health problems, to be allowed to do so via a video-conference. This measure would allow W04600 to give evidence from his country of residence without the significant physical and psychological stress of travelling to The Hague. It will also benefit the quality of his evidence, enabling him to testify without the fatigue and medical complications that extended travel will likely cause.

8. Pursuant to Article 3 of the Practice Direction on Video Links, the SPO provides the following information: (i) W04600 is tentatively anticipated to testify during the evidentiary block commencing on [REDACTED]; (ii) the expected duration of direct examination of W04600 is one hour; (iii) the SPO requests W04600 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 health condition, the witness may require breaks during testimony, but the SPO is not aware of any other special needs; and (vi) W04600 will testify in Albanian.

B. W04366

9. W04366's evidence relates primarily to crimes alleged to have been committed in [REDACTED].¹¹

10. Use of video-conference is necessary to ensure the witness's well-being and that of his immediate family members. W04366 [REDACTED].¹² This mode of testimony was – and still is – necessary because W04366's [REDACTED]. [REDACTED]. By way of example, [REDACTED]. W04366 explained that he cannot carry out his duties as a witness under these circumstances. If W04366 is allowed to testify from [REDACTED], he will be able to minimise his time away from home and testify without unnecessary risks to [REDACTED] well-being.

¹¹ A Rule 154 application will be filed in due course.

¹² See [REDACTED].

11. Pursuant to Article 3 of the Practice Direction on Video Links, the SPO provides the following information: (i) the witness is tentatively anticipated to testify during the evidentiary block commencing [REDACTED]; (ii) the expected duration of direct examination of W04366 is 30 minutes; (iii) the SPO requests W04366 to appear via video-conference from the [REDACTED]; (iv) the witness has in-court protective measures, including use of a pseudonym and face/voice distortion, and the SPO is not aware of any special needs; and (v) W04366 will testify in Albanian.

C. THE CONDITIONS FOR VIDEO-CONFERENCE TESTIMONY ARE MET

12. For the reasons detailed above, the conditions for granting video-conference testimony are met in relation to W04600 and W04366.¹³ While in-court testimony is preferred,¹⁴ the available technology and venue chosen allow the witnesses to be examined under the same conditions as they would be in the courtroom, and will 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. The witnesses will take the solemn declaration and testify in real-time in the presence of the Parties, Victims' Counsel, and Panel, who will be able to question the witnesses. The Panel will also be able to observe the witnesses' demeanour and assess their credibility.¹⁵

III. CLASSIFICATION

13. This filing is strictly confidential and *ex parte* pursuant to Rule 82(3) as it concerns protected witnesses and contains confidential and private information, including certain, highly sensitive information pertaining to a member of W04366's family that is not relevant to Defence preparations or necessary for a meaningful response to this request.¹⁶ Confidential and public redacted versions will be filed.

¹³ See Rules 141(1), 144.

¹⁴ Decision on Prosecution Request for the Video-Conference Testimony of W04445 and W04501, KSC-BC-2020-06/F02396, 20 June 2024 ('W04445 and W04501 Decision'), para.10.

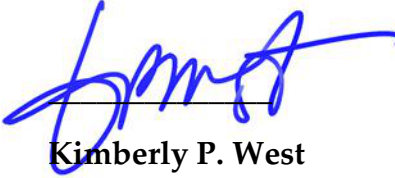
¹⁵ W04445 and W04501 Decision, KSC-BC-2020-06/F02396, para.6.

¹⁶ See, *similarly*, [REDACTED].

IV. RELIEF REQUESTED

14. For the reasons set out above, the Panel should authorise video-conference testimony for W04600 and W04366.

Word Count: 1417



Kimberly P. West

Specialist Prosecutor

Thursday, 18 July 2024

At The Hague, the Netherlands.