



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: 3 September 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution request for video-conference testimony for W02135 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 that the Trial Panel authorise the testimony of W02135 to take place by video-conference from a location in [REDACTED] ('Request').

2. W02135 is a scheduled witness for the evidentiary block between 16 September and 3 October 2024.⁴ The SPO intends to call W02135 the week commencing 23 September 2024. In light of [REDACTED], video-conference testimony will ensure [REDACTED] and facilitate 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 the customary interest in ensuring that a witness testifies during ordinary courtroom hours, also requests a modified sitting schedule, considering [REDACTED].

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

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 ANNEX 1 to Prosecution submission of list of witnesses for 19 August to 7 November 2024, KSC-BC-2020-06/F02451/A01, 16 July 2024, Confidential, p.89.

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

5. Video-link testimony should not be considered only on an exceptional basis.⁶ Instead, 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.⁷ These factors may also include procedural considerations, including the efficient conduct of the proceedings.⁸

6. W02135 is a Rule 154 witness, whose evidence primarily relates to [REDACTED].

7. While W02135 is willing to testify, the witness has informed the SPO that [REDACTED]. Although W02135 stated his intention and hope to travel to The Hague, noting that he considered it a matter of duty, [REDACTED]. W02135 also acknowledged that the preparation for and undertaking of such a journey implicates [REDACTED].

8. In these circumstances, video-conference is consistent with minimising the risk of harm and facilitating the witness's testimony. For these reasons, participating via video-link can improve the quality of W02135's evidence, and would ensure [REDACTED].⁹

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. *See also* KSC-BC-2020-07, Transcript of Hearing, 14 January 2022, p. 3034, lines 6-10.

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

⁹ *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

9. Granting the Request would also not be prejudicial to or inconsistent with the rights of the Accused.¹⁰ The available technology allows for W02135 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 she 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) W02135 is anticipated to appear during the 16 September - 3 October 2024 evidentiary block (ii) the expected duration of direct examination of W02135 is no more than two hours and will likely be reduced in light of [REDACTED]; (iii) the SPO requests W02135 to appear via video-conference from an appropriate location in [REDACTED]; (iv) W02135 has no in-court protective measures; (v) due to [REDACTED], the witness may require breaks during testimony, but the SPO is not aware of any other special needs; and (vi) W02135 will testify in English. The SPO remains available should the Registry require any further information.

11. Finally, as noted above, the SPO exceptionally requests a slightly modified sitting schedule, given [REDACTED]. While the 9:00 commencement for anticipated viva voce testimony was already challenging under the circumstances, [REDACTED]. Accordingly, the SPO requests that the sitting schedule be adjusted by starting one hour later, at 10:00, The Hague time, [REDACTED].

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.

¹⁰ See Decision F01776, KSC-BC-2020-06/F01776, para.15.

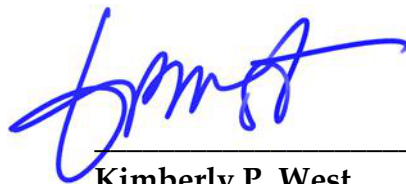
III. CLASSIFICATION

12. This filing is confidential pursuant to Rule 82(3) since it contains personal information concerning W02135.

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: 1,118



Kimberly P. West

Specialist Prosecutor

Tuesday, 3 September 2024

At The Hague, the Netherlands.