



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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 10 September 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution request for video-conference testimony
for W04422'

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 W04422 to take place by video-conference from [REDACTED] ('Request').

2. W04422 is anticipated to testify on [REDACTED] 2024.⁴ In light of the witness's personal circumstances, video-conference testimony will ensure the witness's well-being and security. 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 must not be prejudicial to or inconsistent with the rights of the accused. No additional criteria are warranted.⁵

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 Prosecution motion for admission of evidence of Witnesses W03885, W04422, and W04669 pursuant to Rule 154 and related request, KSC-BC-2020-06/F02530, 4 September 2024, Confidential, para.2

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.

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, 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 and flexibility warranted for reserve witnesses, given their nature.⁹

5. W04422 is a Rule 154 [REDACTED] witness, whose evidence primarily relates to crimes alleged to have occurred in [REDACTED] in [REDACTED], specifically the abduction of [REDACTED] by the KLA and [REDACTED].

6. While W04422 is willing and available to testify, he recently informed the SPO that he is unable to travel [REDACTED]. W04422, who will testify with protective measures, is currently [REDACTED] and [REDACTED] for in-person testimony would be impractical, attract unnecessary attention, and could be detrimental to his livelihood. Further, the witness's evidence is of limited scope and nature, and the timing of his testimony – which is anticipated to take no more than a day – is dependent on the completion of witnesses scheduled before him.

7. In these circumstances, using video-conference aligns best with minimising the risk of harm and disruptions not only to the life and security of the witness and his family, but also to the court schedule, while supporting the witness's ability to provide

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

⁷ 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.

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

⁹ Oral Order authorising Witness W04586's testimony to take place via video-conference, 14 July 2023, Transcript, pp.5802-5803.

truthful and open testimony. For these reasons, participating via video-link will improve the quality of W04422's evidence, and ensure his physical and psychological well-being.¹⁰

8. Granting the Request would also not be prejudicial to or inconsistent with the rights of the Accused.¹¹ The available technology allows for W04422 to be examined under the same conditions as he would be in the courtroom.¹² 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.

9. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) W04422 is currently anticipated to testify on [REDACTED] 2024; (ii) the expected duration of direct examination of W04422 is no more than one (1) hour; (iii) the SPO requests W04422 to appear via video-conference from [REDACTED]; (iv) the witness has in-court protective measures, including pseudonym and closed session; (v) the SPO is not aware of any other special needs; and (vi) W04422 will testify in Albanian. The SPO remains available should the Registry require any further information.

III. CLASSIFICATION

10. This filing is confidential pursuant to Rule 82(3) since it contains personal information concerning W04422.

¹⁰ 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)

¹¹ 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.

¹² See also para.**Error! Reference source not found.** above.

IV. RELIEF REQUESTED

11. For the reasons set out above, the SPO requests that the Panel authorise video-conference testimony for W04422.

Word Count: 1004



Kimberly P. West

Specialist Prosecutor

Tuesday, 10 September 2024

At The Hague, the Netherlands.