



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: 25 September 2024

Language: English

Classification: Public

**Public Redacted Version of 'Prosecution request for video-conference testimony
for W00344'**

Specialist Prosecutor's Office

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Counsel for Kadri Veseli

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Venkateswari Alagenda

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 Practice Direction,³ the Specialist Prosecutor's Office ('SPO') requests that the Trial Panel authorise the testimony of W00344 to take place by video-conference from an appropriate location in [REDACTED] ('Request').⁴

2. As previously noted, the SPO has identified additional witnesses for the 21 October-7 November 2024 evidentiary block, and W00344 has been notified as an additional reserve witness for this or future blocks.⁵ In light of W00344's personal circumstances and his status as a reserve witness, who may be called at short notice, video-conference testimony is needed to ensure the witness's health and well-being, and to facilitate his 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

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').

⁴ Based on preliminary consultations and in line with the agreed practice, [REDACTED] are likely to be made available for testimony by video-conference link.

⁵ Prosecution motion for admission of evidence of Witnesses W00344, W001225, W04485, and W04758 pursuant to Rule 154, KSC-BC-2020-06/F02593, 24 September 2024, Confidential ('Rule 154 Motion'), para.1.

must not be prejudicial to or inconsistent with the rights of the accused. No additional criteria are warranted.⁶

4. 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 is warranted for reserve witnesses, given their nature.¹⁰

5. W00344 is a protected, crime-base witness, whose evidence primarily relates to crimes alleged to have been perpetrated by the KLA in [REDACTED]. W00344 has been notified as a reserve witness for the 21 October-7 November 2024 evidentiary block, and his evidence is the subject of the Rule 154 Motion.¹¹

6. W00344 confirmed his availability to testify. He suffers, however, from severe health issues, including [REDACTED], and has serious mobility problems. In this respect, the witness has an [REDACTED]. He also has sleeping problems, which are aggravated by nightmares about his detention in [REDACTED].

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

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.

¹¹ KSC-BC-2020-06/F02593.

7. Considering W00344's very poor health, video-conference testimony would be conducive to W00334's physical and psychological well-being. In addition, W00344's status as a reserve witness – which requires his availability at short notice and makes his actual testimony date contingent upon unanticipated changes in the schedule – further warrants the use of video-conference. In these circumstances, the combined benefits to expeditious proceedings and the witness's well-being justify video-conference testimony.

8. Granting the Request would not be prejudicial to or inconsistent with the rights of the Accused.¹² The available technology allows for W00344 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 present in the courtroom. The Panel will also be able to observe his demeanour.

9. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) W00344 is anticipated to appear as a reserve witness in the 21 October–7 November 2024 evidentiary block;¹³ (ii) the expected duration of direct examination of W00344 is no more than one hour; (iii) the SPO requests W00344 to appear via video-conference from an appropriate location in [REDACTED]; (iv) W00344 has in-court protective measures, including pseudonym, and face and voice distortion;¹⁴ (v) the SPO is not aware of any other special measures required during the witness's testimony; and (vi) W00344 will testify in [REDACTED]. The SPO remains available should the Registry require any further information.

¹² See Decision F02308, KSC-BC-2020-06/F02308, para 11; Decision F01776, KSC-BC-2020-06/F01776, para.15.

¹³ To the extent he is not called during this block, he will be a scheduled or reserve witness for future blocks.

¹⁴ See Corrected version of First Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00133/COR 10 December 2020, Confidential, paras 132(q).


III. CLASSIFICATION

10. This filing is confidential to give effect to existing protective measures and because it contains personal information concerning the witness.

IV. RELIEF REQUESTED

11. For the reasons set out above, the Panel should grant this Request.

Word Count: 1044



Kimberly P. West

Specialist Prosecutor

Wednesday, 25 September 2024

At The Hague, the Netherlands.