



In: **KSC-BC-2023-10**

The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

Before: **Trial Panel I**

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 13 November 2024

Language: English

Classification: **Public**

Decision on witness familiarisation

To be notified to:

Specialist Prosecutor
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Toby Cadman

TRIAL PANEL I (Panel) hereby renders this decision on witness familiarisation.

I. PROCEDURAL BACKGROUND

1. On 24 September 2024, the Panel sought submissions from the Parties and the Registrar/Witness Protection and Support Office (WPSO) on, *inter alia*, familiarisation of witnesses prior to testimony, taking into account the Panel's practice in case KSC-BC-2020-04 (Case 04).¹

2. Between 28 September and 4 October 2024, the Specialist Prosecutor's Office (SPO and SPO Submissions),² the Defence for Ismet Bahtijari (Bahtijari Defence, Bahtijari Submissions, and Bahtijari Further Submissions),³ the Defence for Haxhi Shala (Shala Defence and Shala Submissions),⁴ and the Registrar/WPSO (Registrar Submissions)⁵ made their submissions. The Defence for Sabit Januzi (Januzi Defence) did not make any submissions in this regard.⁶

¹ KSC-BC-2023-10, F00479, Trial Panel I, [Decision setting the dates for trial preparation conferences, requesting submissions and on related matters](#), 24 September 2024, public, paras 12, 15, 32(c).

² KSC-BC-2023-10, F00491, Specialist Prosecutor, *Prosecution submissions in advance of trial preparation conferences*, 1 October 2024, confidential, with Annex 1, confidential. A public redacted version of the submissions was filed on 4 October 2024, F00491/RED.

³ KSC-BC-2023-10, F00494, Bahtijari Defence, *Bahtijari submissions on trial preparation pursuant to F00479*, 2 October 2024, confidential. A public redacted version of the submissions was filed on 18 October 2024, F00494/RED; F00502, Bahtijari Defence, *Bahtijari further submissions on trial preparation pursuant to F00479*, 4 October 2024, confidential. A public redacted version of the further submissions was filed on 21 October 2024, F00502/RED.

⁴ KSC-BC-2023-10, F00482, Shala Defence, *Submission by the Defence of Haxhi Shala of written information as specified in paragraphs 12-20 of F00479*, 28 September 2024, public, with Annex 1, public.

⁵ KSC-BC-2023-10, F00490, Registry, *Registry Submissions for Trial Preparation Conferences*, 1 October 2024, public, with Annex 1, confidential, and Annexes 2 to 5, strictly confidential and *ex parte*.

⁶ KSC-BC-2023-10, F00495, Januzi Defence, *Submissions for the Trial Preparation Conferences on behalf of Januzi*, 1 October 2024, public.

3. On 16 October 2024, following further directions from the Panel,⁷ the Bahtijari Defence (Bahtijari Witness Preparation Submissions)⁸ and the Shala Defence (Shala Witness Preparation Submissions)⁹ made submissions on witness preparation. The Januzi Defence did not make any submissions in this regard.

4. On 21 October 2024, the SPO filed a reply to the Bahtijari Witness Preparation Submissions and the Shala Witness Preparation Submissions (SPO Reply).¹⁰

5. On 28 October 2024, the Bahtijari Defence filed a reply to the SPO Reply (Bahtijari Reply to SPO Reply).¹¹

II. SUBMISSIONS

A. SPO SUBMISSIONS

6. The SPO submits that it maintains its position taken in Case 04 and in case KSC-BC-2020-05 (Case 05) with respect to the advantages of witness preparation sessions between the calling entity and a witness.¹²

7. More specifically, the SPO submits that: (i) although the practice of witness preparation is not specifically regulated in the Specialist Chambers (SC) legal framework, it has been permitted by Kosovo courts and has now also been

⁷ KSC-BC-2023-10, Transcript of Hearing, 8 October 2024, public, p. 368, lines 11 to p. 369, line 4.

⁸ KSC-BC-2023-10, F00535, Bahtijari Defence, *Bahtijari submissions on witness preparation and witness familiarisation*, 16 October 2024, confidential. A public redacted version of the submissions was filed on 5 November 2024, F00535/RED.

⁹ KSC-BC-2023-10, F00536, Shala Defence, *Submission on the Practice of Witness Preparation*, 16 October 2024, public.

¹⁰ KSC-BC-2023-10, F00544, Specialist Prosecutor, *Prosecution reply to Defence submissions on witness preparation*, 21 October 2024, confidential. A public redacted version of the reply was filed on 23 October 2024, F00544/RED.

¹¹ KSC-BC-2023-10, F00565, Bahtijari Defence, *Bahtijari Reply to "Prosecution reply to Defence submissions on witness preparation"* F00544, 28 October 2024, confidential.

¹² SPO Submissions, paras 16-22.

codified in the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032 (KCPC),¹³ and is widely adopted before international/hybrid judicial institutions;¹⁴ (ii) properly conducted witness preparation contributes to the provision of relevant, accurate, and focused testimony, and can support the well-being of witnesses;¹⁵ and (iii) witness preparation may be especially appropriate in instances where there is a known climate of witness intimidation, as it can enable the calling entity to try to allay witness fears and obtain any further relevant information regarding interference since the last contact.¹⁶

8. The SPO further requests that the Parties be invited to consult and, jointly, if possible, make submissions on witness preparation, including providing a draft “familiarisation” protocol containing relevant guidelines and safeguards.¹⁷

B. BAHTIJARI SUBMISSIONS AND BAHTIJARI FURTHER SUBMISSIONS

9. The Bahtijari Defence submits that while it is content to follow the witness familiarisation regime adopted in Case 04,¹⁸ it objects to the practice of witness preparation proposed by the SPO.¹⁹

C. SHALA SUBMISSIONS

10. The Shala Defence submits that it has no objection to the witness familiarisation regime adopted in Case 04, but that it opposes any witness preparation.²⁰

¹³ SPO Submissions, para. 17.

¹⁴ SPO Submissions, para. 17.

¹⁵ SPO Submissions, para. 18.

¹⁶ SPO Submissions, paras 16, 19-21.

¹⁷ SPO Submissions, para. 23.

¹⁸ Bahtijari Submissions, para. 19.

¹⁹ Bahtijari Further Submissions, para. 4. *See also* Bahtijari Reply to SPO Reply, paras 4, 21.

²⁰ Shala Submissions, p. 5, para. 15. *See also* KSC-BC-2023-10, Transcript of Hearing, 7 October 2024, public, p. 354, line 17-19.

D. REGISTRAR SUBMISSIONS

11. The Registrar indicates that she does not have further submissions on the approach on witness familiarisation taken by the Panel in Case 04 and Case 05.²¹ The Registrar further provides, as annex to her submissions, the guidelines and instructions WPSO has developed on the support it provides to witnesses prior to, during, and after their testimony which incorporate best practices on familiarising witnesses and on other support services.²²

E. BAHTIJARI WITNESS PREPARATION SUBMISSIONS

12. The Bahtijari Defence reiterates its previous submissions in support of the witness familiarisation regime/process adopted in Case 04.²³

13. As regards witness preparation, the Bahtijari Defence reiterates its objection to the adoption of such practice²⁴ arguing that: (i) it is mostly rejected by international courts and tribunals;²⁵ (ii) the fact that a form of witness preparation has been included in the KCPC does not limit the Panel's discretion to decide on whether or not the practice of witness preparation should be implemented;²⁶ (iii) the Panel ruled out witness preparation on two prior occasions, i.e. in Case 04 and Case 05, and the circumstances of the present case do not justify departing from the Panel's previous practice;²⁷ and (iv) witness preparation in the present case could impair the evidence to be given by the SPO witnesses.²⁸

²¹ Registrar Submissions, para. 3.

²² Registrar Submissions, para. 4; Annex 1 to Registrar Submissions.

²³ Bahtijari Witness Preparation Submissions, paras 3, 5, 31-33, 34(b).

²⁴ Bahtijari Witness Preparation Submissions, paras 3-4, 34(a).

²⁵ Bahtijari Witness Preparation Submissions, paras 12-14.

²⁶ Bahtijari Witness Preparation Submissions, para. 15.

²⁷ Bahtijari Witness Preparation Submissions, paras 16-22.

²⁸ Bahtijari Witness Preparation Submissions, paras 23-25.

14. The Bahtijari Defence submits alternatively that, should the Panel decide to depart from its own jurisprudence, the protocol on witness preparation to be adopted by the Panel ought to include strong safeguards enabling the Panel and the non-calling entity to understand how the preparation is to take place.²⁹

F. SHALA WITNESS PREPARATION SUBMISSIONS

15. The Shala Defence reiterates its support to the witness familiarisation regime previously adopted by the Panel.³⁰

16. As regards witness preparation, the Shala Defence indicates that it objects to this practice while referring to the Panel's reasoning in the decision on witness familiarisation in Case 05.³¹ Notably, the Shala Defence submits, among others, that discussing matters relating to the substance of the testimony with the calling entity upfront outside the courtroom bears the risk of unintentionally transmitting a certain expectation of the calling entity about the upcoming testimony, thereby inadvertently influencing or contaminating the witness.³² In addition, the Shala Defence argues that, given that the events at the center of the testimony of the SPO witnesses occurred very recently, it is not necessary for the SPO to hold any sessions to prepare the witnesses to give relevant, accurate, and focused in-court testimony.³³

²⁹ Bahtijari Witness Preparation Submissions, paras 26-29, 34(c).

³⁰ Shala Witness Preparation Submissions, paras 18, 24.

³¹ Shala Witness Preparation Submissions, paras 14-17, 19-20, 22-23 referring to KSC-BC-2020-05, F00150, Trial Panel I, [Decision on witness familiarisation](#) (Case 05 Familiarisation Decision), 9 July 2021, public. See also KSC-BC-2023-10, Transcript of Hearing, 7 October 2024, public, p. 355, line 17.

³² Shala Witness Preparation Submissions, para. 19.

³³ Shala Witness Preparation Submissions, para. 21.

G. SPO REPLY

17. The SPO replies that the concerns expressed by the Bahtijari Defence and the Shala Defence can be addressed through an order for the conduct of proceedings setting forth specific requirements for witness preparation, similar to the one adopted in case KSC-BC-2020-06 (Case 06).³⁴ In particular, it stresses that witness preparation would facilitate the effective use of courtroom time in this specific case and tendering and discussing in full certain evidence in the courtroom with the witness would be avoided.³⁵

18. Moreover, the SPO maintains that, contrary to the Bahtijari Defence's assertions, the circumstances of the present case favour allowing witness preparation. The SPO argues, among others, that: (i) the present case involves offences "found in Kosovo domestic cases" for which witness preparation applies; (ii) witness traumatising, potentially arising from the fact that the instant case involves, *inter alia*, confirming a threat of death to the target witness and his family member while in his home, could be seen as a factor justifying witness preparation; and (iii) witness preparation was for the most part accepted at the ICTY/ICTR and is favoured in recent ICC practice. The SPO further underscores the importance of a unified practice both across international criminal tribunals and in particular at the SC.³⁶

H. BAHTIJARI REPLY TO SPO REPLY

19. The Bahtijari Defence replies to the arguments raised in the SPO Reply, stressing that the risk of unduly influencing the witness may not be intentionally or in bad faith on the part of the SPO, and that, if witness preparation was permitted, audio or video

³⁴ SPO Reply, paras 2-4.

³⁵ SPO Reply, para. 5.

³⁶ SPO Reply, paras 2, 6-8.

recording was necessary.³⁷ It also repeats that the volume of evidence in this case is limited,³⁸ the KCPC is not applicable directly in the present case,³⁹ and recalls that ICC Chambers have by majority rejected witness preparation.⁴⁰ Accordingly, the Bahtijari Defence submits that the characteristics of the present case do not warrant witness preparation.⁴¹

III. APPLICABLE LAW

20. The Panel notes Articles 34(8) and 40(2) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 27, 80 and 116 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

IV. ANALYSIS

A. PRELIMINARY MATTER

21. The Panel notes that, in the Bahtijari Reply to the SPO Reply, the Bahtijari Defence argues that, for the purpose of fully informing the Panel, it deems it necessary to present a reply to the SPO Reply following several misrepresentations of its submissions.⁴² The Panel notes however that the Bahtijari Defence did not seek leave to submit the aforementioned submissions and fails to justify the need for such submissions other than further outlining points of contention already raised in the Bahtijari Witness Preparation Submissions. In any event, the Panel

³⁷ Bahtijari Reply to SPO Reply, paras 12-15.

³⁸ Bahtijari Reply to SPO Reply, para. 16.

³⁹ Bahtijari Reply to SPO Reply, paras 17-18, 20.

⁴⁰ Bahtijari Reply to SPO Reply, para. 19.

⁴¹ Bahtijari Reply to SPO Reply, para. 21.

⁴² Bahtijari Reply to SPO Reply, paras 3-4.

considers that it does not require further submissions on the issue of witness preparation. As a result, the Panel will not take into account the Bahtijari Reply to the SPO Reply for the purpose of this decision.

B. WITNESS FAMILIARISATION PRIOR TO TESTIMONY

22. At the outset, the Panel clarifies that it uses the term “witness familiarisation” when referring to the information and support provided by WPSO to witnesses prior to their testimony, pursuant to its obligations under Article 34(8) of the Law and Rules 27 and 80(8) of the Rules. It further uses the term “witness preparation” when referring to any meeting between a witness and the calling entity, taking place before the witness’s testimony, for the purpose of discussing any matters relating to the substance of the witness’s testimony.⁴³

23. Noting the submissions of the Bahtijari Defence and the Shala Defence as regards witness familiarisation,⁴⁴ as well as the “WPSO Guidelines on Services to Witnesses Appearing Before the Specialist Chambers”,⁴⁵ the Panel sets out below its instructions to WPSO and other relevant entities in relation to witness familiarisation prior to testimony.

⁴³ KSC-BC-2020-04, F00435, Trial Panel I, [Decision on witness familiarisation](#) (Case 04 Familiarisation Decision), 24 February 2023, public, para. 9. The Panel understands the term “witness preparation” broadly, covering a number of expressions, including, *inter alia*, “witness proofing”, “witness training”, and “witness coaching”, used in different jurisdictions in connection with practices aimed at preparing a witness to give oral testimony. *Similarly*, ICC, *Prosecutor v. Lubanga*, Pre-Trial Chamber I, [Decision on the Practices of Witness Familiarisation and Witness Proofing](#), 8 November 2006, ICC-01/04-01/06-679, public, para. 12.

⁴⁴ See *supra* paras 9, 12, 15.

⁴⁵ KSC-BD-42/Rev3, Registry Instruction. WPSO Guidelines on Services to Witnesses Appearing Before the Specialist Chambers, 27 September 2024, annexed as Annex 1 to Registrar Submissions, pp. 24-34 (WPSO Guidelines).

1. Initial Information from the Calling Entity

24. The Panel recalls that the calling entity shall provide WPSO with a completed Witness Information Form (WIF) for each witness as soon as practicable and, in any event, no later than thirty-five (35) working days prior to the witness's expected testimony.⁴⁶ Moreover, at least thirty (30) days before the start of each evidentiary block (or, for witnesses scheduled to testifying outside of set evidentiary blocks, at least thirty (30) days before their scheduled testimony),⁴⁷ the Parties shall submit to WPSO an updated Witness Appearance List (WAL),⁴⁸ including: (i) the sequence of witnesses in order of appearance; (ii) whether they will testify in person at the seat of the court, by video-conference at another location, or give evidence by other means as provided for by the Rules;⁴⁹ (iii) the date when each witness is required to be at the location of testimony; (iv) protective measures, if applicable; (v) the language of testimony; and (vi) the estimated length of testimony. To this end, WPSO shall make the WIF and the WAL templates available to the Parties in a suitable electronic format as soon as possible.

25. The calling entity shall notify WPSO at the time of providing the WIF of any witnesses who may potentially incriminate themselves. WPSO shall ensure that the Defence Office of the Registry is informed in the event that legal assistance pursuant to Rule 151(4) of the Rules is required.⁵⁰

⁴⁶ See WPSO Guidelines, Section 4(1)-(2). See also Case 04 Familiarisation Decision, para. 11.

⁴⁷ See KSC-BC-2023-10, F00586, Trial Panel I, *Decision on the conduct of the proceedings* (Decision on the conduct of the proceedings), 11 November 2024, public, paras 27, 34.

⁴⁸ See WPSO Guidelines, Section 4(3). Case 04 Familiarisation Decision, para. 11.

⁴⁹ See Rules 141(1), 144, 145(1) of the Rules.

⁵⁰ See also Decision on the conduct of the proceedings, paras 64-66. Case 04 Familiarisation Decision, para. 12.

26. The calling entity shall remain available to WPSO for the purpose of exchanging relevant information and, to the extent possible, gather all relevant details needed.

2. Pre-Familiarisation Process

27. Prior to the commencement of the familiarisation process, the calling entity shall facilitate an introductory meeting between WPSO and the witness and inform the witness that WPSO will be responsible for the necessary arrangements to facilitate the witness's travel, as applicable, for the purpose of giving testimony. WPSO shall explain to the witness the services and assistance it will provide, and inform the witness on topics related to his or her safety, welfare, travel and logistics, accommodation, and any allowances the witness is entitled to. WPSO shall also arrange all necessary travel and logistics to ensure the witness's timely appearance before the SC, with due regard to his or her safety and well-being.⁵¹

3. Start of Familiarisation Process

28. Upon the witness's arrival in the Netherlands to testify in person at the seat of the SC, or upon his or her arrival at the venue chosen for the conduct of the video-conference testimony pursuant to Rule 144(2) of the Rules, or at an appropriate time prior to testimony in the case of a witness to be examined at the place where he or she resides or is in care pursuant to Rule 145(1) of the Rules, WPSO shall provide the witness with a welcome and orientation briefing describing the specific programme for the witness's appearance and testimony before the SC, including the tentative court appearance schedule, if known.⁵²

⁵¹ Case 04 Familiarisation Decision, para. 14.

⁵² Case 04 Familiarisation Decision, para. 15.

29. At that time, WPSO undertakes a vulnerability assessment of the witness. A summary of this assessment shall be submitted directly to the Panel prior to the testimony of the witness, including any appropriate recommendations as concerns special measures under Rule 80(4)(c) of the Rules. Information about recommended measures shall also be provided to the Parties.⁵³

4. Cut-off Date for Contacts with the Calling Entity

30. Once the process of witness familiarisation has commenced, the witness is in the care of WPSO and any further meeting between the calling entity and this witness outside the courtroom is prohibited. For witnesses testifying in person at the seat of the SC, the cut-off date for contact between the calling entity and the witness prior to testimony shall be the witness's arrival in the Netherlands. For witnesses testifying via video-conference at another location, the cut-off date shall be the date of the witness's arrival at the location of testimony. For witnesses to be examined away from the trial venue pursuant to Rule 145(1) of the Rules, the cut-off date shall be the date of WPSO's arrival at the location of testimony. If the witness familiarisation process ought to start prior to the aforementioned cut-off dates, WPSO must communicate this to the Parties sufficiently in advance. WPSO shall inform the calling entity when the witness is scheduled to arrive and if major delays occur.⁵⁴

31. Following such cut-off date, and until the end of the witness's testimony, the calling entity's contact with the witness shall be restricted to a courtesy meeting, as further described below, and its examination of the witness in court, unless otherwise authorised by the Panel. During such period, WPSO will act as a conduit

⁵³ Case 04 Familiarisation Decision, para. 16.

⁵⁴ Case 04 Familiarisation Decision, para. 17.

for communication between the witness and the calling entity, when necessary, and as directed by the Panel.⁵⁵

32. The aforementioned limitation of contact does not apply to expert witnesses. Discussions between the calling entity and its expert witnesses may take place at any stage prior to calling such witnesses.⁵⁶

5. Familiarisation Concerning the (Trial) Venue

33. If a witness testifies at the seat of the SC, WPSO shall accompany the witness to the courtroom and familiarise him or her with the courtroom setting and, if required, introduce the witness to the different systems used in court, paying special attention to the technical implementation of any in-court protective and/or special measures pursuant to Rule 80 of the Rules, where applicable. This courtroom familiarisation process may be adapted for vulnerable witnesses, as necessary.⁵⁷

34. WPSO shall also inform the witness about the nature of the courtroom proceedings, the courtroom layout, and the participants. The witness waiting rooms and other relevant facilities shall also be shown to the witness. If the witness requires in-court assistance, the in-court assistant shall be present, if possible.⁵⁸

35. For witnesses testifying via video-conference or away from the trial venue pursuant to Rule 145(1) of the Rules, this process shall be adapted by WPSO, as required, whilst ensuring that such witnesses are adequately familiarised with the

⁵⁵ Case 04 Familiarisation Decision, para. 18.

⁵⁶ Case 04 Familiarisation Decision, para. 19.

⁵⁷ Case 04 Familiarisation Decision, para. 21.

⁵⁸ Case 04 Familiarisation Decision, para. 22.

different systems used in court and at the location of testimony, the participants, and the facilities available at the location of testimony.⁵⁹

36. If needed for the benefit of the witness, the familiarisation process can be repeated.⁶⁰

6. Courtesy Meeting with the Parties

37. In order to give witnesses the opportunity to acquaint themselves with those who may examine them in court, the Parties, as applicable, shall provide WPSO, prior to the commencement of the familiarisation process, with the names of the persons who will be present in the courtroom, to the extent possible. WPSO shall then arrange a courtesy meeting between the witness and the aforementioned persons. (Separate) courtesy meetings will take place for each entity, on the premises of the SC and in the presence of WPSO staff. In the case of witnesses testifying via video-conference, the courtesy meeting may be held remotely using adequate video-conferencing tools. In the case of witnesses testifying away from the trial venue pursuant to Rule 145(1) of the Rules, the courtesy meeting shall take place at the location of testimony.⁶¹

7. Re-Reading of Prior Statement(s) and Related Material

38. Concomitantly with the provision of the WIF for each upcoming witness, the calling entity shall indicate to WPSO the number of material, length of statement(s), and estimated time required to read any signed statement and

⁵⁹ Case 04 Familiarisation Decision, para. 23.

⁶⁰ Case 04 Familiarisation Decision, para. 24.

⁶¹ Case 04 Familiarisation Decision, para. 25.

recorded interview by the witness, as well as any document or information generated or provided by the witness when giving his/her previous statement(s).⁶²

39. Upon commencement of the familiarisation process, the calling entity shall make available to WPSO all of the aforementioned relevant material in order for the witness to refresh his or her memory. Subsequently, WPSO shall facilitate the witness's access to such material for the purpose of re-reading it. With a view to avoiding potential disputes in court, the calling entity shall inform the non-calling entities about the material concerned three (3) days before such material is handed out to the witness. The material shall be provided by the calling entity in the language in which it was given by the witness or in a language the witness easily understands. WPSO may arrange for reading assistance, as necessary.⁶³

40. WPSO shall closely monitor the well-being of the witness to determine if he or she requires any assistance or support during this process. WPSO is under no duty to record anything the witness says during the reading process. Only if something exceptional occurs during the reading process shall WPSO report it to the calling entity, the witness's counsel, if applicable, and the Panel.⁶⁴

41. WPSO shall keep a record of the material provided to the witness, the dates the material was made available to the witness, and when said material was returned to the calling entity.⁶⁵

8. Information on Protective Measures

42. When meeting witnesses, WPSO shall inform them about any matter related to their security and safety, including any protective measures ordered, as well as

⁶² Case 04 Familiarisation Decision, para. 26.

⁶³ Case 04 Familiarisation Decision, para. 27.

⁶⁴ Case 04 Familiarisation Decision, para. 28.

⁶⁵ Case 04 Familiarisation Decision, para. 29.

the right to request such measures pursuant to Rule 80(1) of the Rules. It shall also inform them, pursuant to Rule 80(8) of the Rules, about the risks of inadvertent or unlawful disclosure of their identity or testimony, despite any protective measures ordered, and the possibility that such measures may be varied in accordance with Rules 80 or 81 of the Rules, as the case may be.⁶⁶

43. Should WPSO, in the course of the familiarisation process, encounter new information that it believes may justify a request for (additional) protective measures, it shall discuss the matter with the witness and inform the calling entity and the Panel directly.⁶⁷

9. Information about Role, Rights and Obligations

44. Prior to their testimony, WPSO shall inform witnesses about their role, rights, and obligations as witnesses before the SC, including the obligation to testify truthfully and to take a solemn declaration before giving testimony, in accordance with Rule 141(2) of the Rules.⁶⁸

45. WPSO shall also remind witnesses about Rule 151 of the Rules concerning self-incrimination.⁶⁹ In this regard, reference is made to the calling party's obligation to notify the Panel of any potential requests for assurances under Rule 151(3) of the Rules.⁷⁰

⁶⁶ Case 04 Familiarisation Decision, para. 30.

⁶⁷ Case 04 Familiarisation Decision, para. 31.

⁶⁸ Case 04 Familiarisation Decision, para. 32.

⁶⁹ Case 04 Familiarisation Decision, para. 33.

⁷⁰ See Decision on the conduct of the proceedings, paras 64-66.

C. WITNESS PREPARATION

46. The Panel notes the Parties' submissions with regard to the practice of witness preparation.⁷¹ It has set out adequately its position in Case 04 and Case 05 and will respond, in the present case, to discrete arguments below.

47. The Panel notes that the SPO acknowledges that the practice of witness preparation is not specifically regulated in the SC legal framework.⁷² The fact that a form of witness preparation has now been codified in Article 121 of KCPC⁷³ does not affect or limit the Panel's broad discretion in this matter,⁷⁴ since this article has not been expressly incorporated into the Law and therefore is not applicable.⁷⁵ Likewise, the jurisprudence of other international or hybrid courts is not binding on this Panel.

48. Moreover, the Panel reaffirms its previous finding that the witness familiarisation process to be carried out under the auspices of WPSO allows witnesses to prepare sufficiently for their upcoming testimony, including by re-reading their prior statement(s) and related material.⁷⁶ The Panel also reaffirms its finding that WPSO is the entity best placed to provide support services and information to witnesses in relation to any topics of concern, address any fears they may have, and obtain information as concerns any alleged interference.⁷⁷ The SPO does not explain why, in a climate of witness intimidation, *only* the SPO is best placed to allay witness fears and obtain further information regarding interference, as opposed to WPSO, the specialized unit within the Registry, which

⁷¹ See *supra* paras 6-18.

⁷² See *supra* para. 7.

⁷³ See *supra* para. 7.

⁷⁴ Case 05 Familiarisation Decision, paras 35-36. See *supra* para. 13.

⁷⁵ Article 3(2)(c) of the Law.

⁷⁶ See *supra* paras 38-41. See also Case 04 Familiarisation Decision, para. 34.

⁷⁷ Case 05 Familiarisation Decision, para. 41.

has been mandated in the present decision to convey the witnesses' remarks to the Panel during the familiarisation process.⁷⁸

49. The Panel further notes that the events at issue in this case took place in April 2023, the SPO witnesses have been recently interviewed, and witnesses may be familiar with court proceedings from past experience. In the Panel's view, the events are fresh in the (SPO) witnesses' minds and, in addition, they can refresh their memory by re-reading their prior statement(s). Further preparation by the calling party is unnecessary.

50. As regards the SPO's argument concerning the effective use of courtroom time in light of certain evidence to be tendered in this specific case,⁷⁹ the Panel recalls that the calling entity is capable of streamlining its questioning and the Panel retains control over the manner of questioning and may intervene, if necessary.⁸⁰

51. In light of the foregoing, the Panel does not consider it appropriate to depart from its previous practice in Case 04 and Case 05 and will therefore not further address the issue of witness preparation.

V. DISPOSITION

52. For the above-mentioned reasons, the Panel hereby:

- a. **DIRECTS** the Parties and WPSO to facilitate witness familiarisation in accordance with paragraphs 24-45 of the present decision; and
- b. **REJECTS** the SPO's request for the adoption of a witness preparation protocol.

⁷⁸ See *supra* paras 42-43.

⁷⁹ See *supra* para. 17.

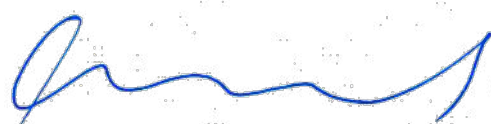
⁸⁰ See generally for the Panel's discussion in the Case 05 Familiarisation Decision, paras 35-42.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Wednesday, 13 November 2024

At The Hague, the Netherlands.