



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: 14 November 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution consolidated request for protective measures and video-conference testimony for W02677'

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Kadri Veseli

Rodney Dixon

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. Pursuant to the Order on the Conduct of Proceedings,¹ Articles 23(1), 35(2)(f) and 40(2) and (6)(f) of the Law,² and Rules 80, 116(4)(b), 141(1), and 144 of the Rules,³ and noting the Practice Direction,⁴ the Specialist Prosecutor's Office ('SPO') requests the Trial Panel to: (i) order necessary and proportionate in-court protective measures for W02677; and (ii) authorise his testimony to take place by video-conference from [REDACTED].⁵

2. W02677 is a reserve witness for upcoming evidentiary blocks.⁶ He has recently requested in-court protective measures, which are: (i) necessary in light of concrete, objective risks to his security and well-being, and that of his family;⁷ and (ii) proportionate, taking into account the rights of the Accused and the principle of publicity. Further, considering W02677's personal circumstances and his reserve witness status, video-conference testimony is needed to ensure the witness's well-being, and to facilitate his testimony in an expeditious manner.

II. SUBMISSIONS

3. W02677 is a Rule 154 crime-base witness, whose material evidence primarily concerns crimes [REDACTED].

¹ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, paras 63-70.

² Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

³ 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.

⁴ Registry Practice Direction on Video Links, KSC-BD-23/COR, 17 July 2020 as corrected on 5 August 2020 ('Practice Direction').

⁵ The applicable law relating to protective measures and video-conference testimony is set out in previous decisions. *See e.g.* Decision on the Prosecution Request for Protective Measures (F01523), KSC-BC-2020-06/F01528, 16 May 2023, Strictly Confidential and *Ex Parte* ('Decision F01528'), para.9 (and sources cited therein); Decision on Prosecution request for video-conference testimony for W00344, KSC-BC-2020-06/F02640, 11 October 2024, paras 4-7 (and sources cited therein).

⁶ [REDACTED]. In light of his availability and the current schedule, it is not anticipated that he would be called before [REDACTED].

⁷ *See* Rule 80(4).

A. IN-COURT PROTECTIVE MEASURES ARE NECESSARY AND PROPORTIONATE

4. In light of objectively justifiable risks to the security and well-being of W02677 and his family, the following in-court protective measures are necessary and proportionate: the use of pseudonym, redaction of the witness's name and identifying information from the court's public records, non-disclosure to the public of any records identifying the witness, face and voice distortion, and private session for in-court discussion or testimony identifying the witness.⁸

5. [REDACTED].⁹ Considering the prevailing climate of witness interference and intimidation in Kosovo, and the Accused's incentives, influence, and networks,¹⁰ W02677 is [REDACTED].¹¹ Thus, he and his family – [REDACTED]¹² – face concrete risks, in particular, if he testifies publicly.

6. The requested measures are also proportionate, as the Accused have access to W02677's identity and prior statements, and will be able to cross-examine him. In the

⁸ Rule 80(1). *See also* ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Decision on Prosecution Motion for Protective Measures for Witness RM-115, 15 August 2010, para.6 ('[e]ven though granting protective measures is and should be the exception to the rule of a public trial, the threshold for when protective measures should be granted cannot be set too high. For example, to exclude persons who have not experienced actual threats or harassment would defy the purpose of the measures; namely, the protection from risks that might occur as a result of the testimony. The Chamber must, therefore, make a risk assessment, and inherent in such an assessment is applying a certain level of caution and erring on the safe side.').

⁹ [REDACTED].

¹⁰ *See, for example*, Confidential Redacted Version of Seventh Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00407/CONF/RED, 21 July 2021, Confidential, paras 43, 63, 76; Confidential Redacted Version of Twelfth Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00571/CONF/RED, 17 November 2021, Confidential, para.31; Public Redacted Version of Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F01111/RED, 18 November 2022, paras 26-28; Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F02642, 14 October 2024, Public, paras 20, 23; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F02643, 14 October 2024, paras 19, 21; Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F02712, 13 November 2024, para.17; Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F02713, 13 November 2024, para.18.

¹¹ *See, similarly*, Decision F01528, KSC-BC-2020-06/F01528, paras 10-12.

¹² [REDACTED]. Mindful of its obligation to ensure that protective measures requests are submitted sufficiently in advance, this request is being made in a timely manner after confirming the basis of the witness's recent request for protective measures.

present circumstances, the requested measures are the least restrictive available to provide appropriate protection for W02677 and his family.

B. VIDEO-CONFERENCE TESTIMONY IS APPROPRIATE

7. Subject to the protective measures requested above, W02677 is willing and available to testify. However – [REDACTED] – being absent for the time required for in-person testimony would risk undue harm and disruption [REDACTED]. In these circumstances and considering his reserve witness status, video-conference testimony would be more conducive to: (i) the witness's ability to provide truthful and open testimony, also considering the concerns he has expressed; and (ii) the expeditious conduct of proceedings, considering the anticipated limited scope and length of his testimony and the witness schedule.¹³

8. Granting the request would also not be prejudicial to or inconsistent with the rights of the Accused.¹⁴ The available technology allows for W02677 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. 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) W02677 is anticipated to appear as a reserve witness for evidentiary blocks between [REDACTED], although in light of his availability and the current schedule, it is not anticipated that he would be called before [REDACTED]; (ii) the expected duration of direct examination is no more than one hour; (iii) the SPO requests W02677 to appear via video-conference from [REDACTED]; (iv) the SPO requests in-court protective measures for W02677; (v) the SPO is not aware of any

¹³ See, similarly, Decision on Prosecution Request for Video-Conference Testimony for W01163, KSC-BC-2020-06/F02588, 20 September 2024 ('Decision F02588'), paras 12, 14.

¹⁴ See Decision F02588, KSC-BC-2020-06/F02588, para.15.

other special needs, and (vi) W02677 will testify in [REDACTED]. The SPO remains available should the Registry require any further information.

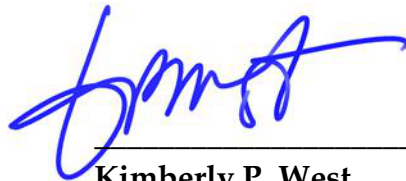
III. CLASSIFICATION

10. This filing is confidential pursuant to Rule 82(3)-(4) and because it contains personal and identifying information of W02677.

IV. RELIEF REQUESTED

11. For the reasons set out above, the Panel should: (i) order the requested protective measures for W02677; and (ii) authorise video-conference testimony.

Word Count: 1,299



Kimberly P. West

Specialist Prosecutor

Thursday, 14 November 2024

At The Hague, the Netherlands.