



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: 17 March 2025

Language: English

Classification: Public

Public redacted version of 'Prosecution reply to joint Defence response F03016'

Specialist Prosecutor's Office

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1. The Response¹ is premised on fundamentally misreading the Request,² arguing points far afield from the relief actually sought.
2. All that the Specialist Prosecutor's Office ('SPO') is requesting is for permission to hear W04747's examination via video-link. The SPO is not seeking any relief pursuant to Rule 143, which is a rule governing 'Examination of Witnesses' and cannot be engaged before testimony commences.³ What might hypothetically happen if and when W04747 appears goes well beyond the scope of the Request.⁴
3. The Request plainly demonstrates reasonable efforts to secure W04747's testimony, with the SPO extensively engaging with both the witness and the Third State authorities. The SPO acted expeditiously and filed the Request within days of the Third State agreeing to issue a summons. [REDACTED],⁵ [REDACTED].
4. The relief sought in the Request is fully justified. Because of his state of residence, the SPO is unable to compel W04747 to appear in-person at the seat of the KSC.⁶ The *only* way to hear this witness's evidence in the current circumstances is via video-link – it is a legal necessity, not an accommodation for a reluctant witness.⁷ The Defence's arguments that *viva voce* testimony is meaningfully better than its video-link equivalent have been litigated and rejected,⁸ and citation to a contrary ruling from

¹ Joint Defence Response to 'Confidential redacted version of Prosecution request for video-conference testimony for W04747 With confidential annexes 1-2' (F02990), KSC-BC-2020-06/F03016, 14 March 2025, Confidential ('Response').

² Confidential redacted version of Prosecution request for video-conference testimony for W04747 With confidential annexes 1-2, KSC-BC-2020-06/F02990/CONF/RED, 7 March 2025, Confidential (notified 10 March 2025) ('Request', with 'Annex 1' and 'Annex 2').

³ *Contra* Response, KSC-BC-2020-06/F03016, paras 6, 41-46.

⁴ This includes the Defence attempt to draw a distinction between W04264's circumstances and what may potentially happen with W04747. Response, KSC-BC-2020-06/F03016, para.43.

⁵ The Defence makes multiple misrepresentations in discussing the relevant sequence of events. [REDACTED]. [REDACTED]. [REDACTED].

⁶ Request, KSC-BC-2020-06/F02990/CONF/RED, paras 9-11, 15.

⁷ *Contra* Response, KSC-BC-2020-06/F03016, paras 18-20.

⁸ See e.g. Decision on Prosecution Request for the Video-Conference Testimony of W01493, KSC-BC-2020-06/F01910, 8 November 2023, Confidential, para.16; Decision on Prosecution Request for Video-

1996⁹ fails to appreciate how modern technology allows for both a full confrontation and credibility evaluation. As such, allegations of falsehoods in W04747's evidence go to its weight, and are also premature.¹⁰ [REDACTED].¹¹

5. The identity of the Third State is redacted from the Accused in an abundance of caution to protect the current contact information of a (sensitive) witness.¹² The Defence has no standing to challenge the legality of the Third State's laws on behalf of W04747, nor is that state's compliance with its domestic law relevant to the admissibility of the witness's evidence.¹³ The Defence only identifies frivolous reasons for why this information is necessary, and the redactions remain justified.¹⁴

6. The request for disclosure of 'all contact notes and other pertinent material

Conference Testimony for W04448 and Related Matters, KSC-BC-2020-06/F01851, 11 October 2023, Confidential, para.13.

⁹ Response, KSC-BC-2020-06/F03016, para.18, citing ICTY, *Prosecutor v. Tadić*, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link, IT-94-1-T, 25 June 1996, para.19.

¹⁰ *Contra* Response, KSC-BC-2020-06/F03016, para.36.

¹¹ [REDACTED]. [REDACTED].

¹² [REDACTED].

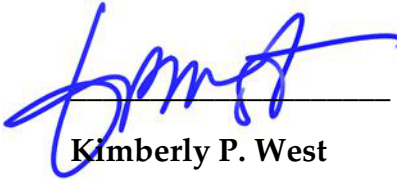
¹³ *Contra* Response, KSC-BC-2020-06/F03016, paras 3-4, 28. The Defence provides no legal basis under this court's statutory scheme as to how such challenges could be advanced, and the ICC Appeals Chamber has taken the view that there is a 'categorical prohibition on ruling on the application of the national law' when interpreting provisions analogous to Articles 37(5) and 53 of the Law and Rule 138 of the Rules. See ICC, *Prosecutor v. Bemba et al.*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute", ICC-01/05-01/13-2275-Red, 8 March 2018, paras 283-292 (from 292: '[i]n light of the above, the Appeals Chamber rejects Mr Mangenda's argument that the bar on the Court ruling on the application of national law does not apply when evidence is collected by a State in execution of a request for assistance by the Court and/or when evidence is directly obtained by the Prosecutor. In addition, on the basis of the categorical prohibition on ruling on the application of national law and underlying principles of judicial cooperation contained in Part 9 of the Statute, the Appeals Chamber also dismisses Mr Kilolo's argument to the effect that the Court should inquire into the application of national law in the collection of evidence by a State because a failure by the State to respect its own law in the collection of the evidence amounts to a "violation of th[e] Statute", most notably article 99 (1), within the meaning of article 69 (7) of the Statute').

¹⁴ In this regard, see Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020, para.94 (a witness's current contact information is a 'clearly delineated and well-entrenched' category of redaction at this and other courts), p.36 (B.1 category).

relating to W04747'¹⁵ should be summarily dismissed, both for seeking new relief in a response¹⁶ and for requesting disclosure without first proceeding *inter partes*.¹⁷ All pertinent W04747 material has already been disclosed in some form or was otherwise annexed to the Request,¹⁸ but what registered notes remain as of now can be disclosed (with standard redactions) by the end of Monday, 17 March 2025.

7. The Request meets all required criteria and should be granted.¹⁹

Word Count: 1320


Kimberly P. West
Specialist Prosecutor

Monday, 17 March 2025

At The Hague, the Netherlands.

¹⁵ Response, KSC-BC-2020-06/F03016, para.48(b).

¹⁶ Public Redacted Version of Decision on Joint Defence Request for Reclassification of F01636 and on Prosecution Request for Further Redaction of F01647/RED, KSC-BC-2020-06/F01737/RED 23 August 2023, para.17; Decision Regarding Cross-Examination by Victims' Counsel, KSC-BC-2020-06/F01359, 9 March 2023, para.11.

¹⁷ See generally Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, para.43.

¹⁸ The Defence fails to explain what 'drip-feeding of disclosure' has occurred for this witness. Response, KSC-BC-2020-06/F03016, para.46. The only official note where any objection to untimely disclosure is even intimated, is in para.2 of the Response, where the Defence notes that the SPO disclosed an additional official note within an hour of its filing deadline. [REDACTED].

¹⁹ This submission is confidential pursuant to Rule 82(4). A public redacted version will be filed.