



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2023-12
Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj,
Isni Kilaj, Fadil Fazliu, and Hajredin Kuçi

Before: Single Trial Judge
Judge Christopher Gosnell

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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**Public redacted version of 'Prosecution submissions on witness familiarisation
process and approach to witness preparation'**

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I. INTRODUCTION

1. On 20 November 2025, the Single Trial Judge ('STJ') issued an Order requesting submissions on matters related to the conduct of proceedings including on, *inter alia*, whether the Parties agree with or otherwise wish to make submissions on the witness familiarisation procedure as adopted in KSC-BC-2023-10 ('Case 10').¹ All Defence teams have since indicated a general willingness to follow the Case 10 Witness Familiarisation Procedure.² As indicated in its prior submission³ and pursuant to Article 40(2) and (6) of the Law⁴ and Rules 116-118 of the Rules,⁵ the Specialist Prosecutor's Office ('SPO') hereby files its submissions on the witness familiarisation procedure and approach to witness preparation to be adopted in this case.

II. SUBMISSIONS

2. Subject to specific caveats and proposed amendments outlined below, the SPO does not object to the adoption of the Case 10 Witness Familiarisation Procedure. In addition to the adoption of the revised Case 10 Witness Familiarisation Procedure, the SPO further requests the inclusion of the Witness Preparation Procedure as outlined

¹ Order Scheduling the Trial Preparation Conference and Requesting Submissions, KSC-BC-2023-12/F00549, 17 November 2025, p.7; *see generally* Decision on witness familiarisation, KSC-BC-2023-10/F00595, 13 November 2024 ('Case 10 Witness Familiarisation Decision'), paras 22-45. References to paragraphs 22-45 of the Case 10 Witness Familiarisation Decision are hereinafter referred to as the 'Case 10 Witness Familiarisation Procedure'.

² Thaçi Defence Submissions for the Trial Preparation Conference, KSC-BC-2023-12/F00568, Confidential, 24 November 2025, para.30; Kilaj Submissions Ahead of Trial Preparation Conference, KSC-BC-2023-12/F00569, Confidential, 24 November 2025, para.12; Kuçi Defence submissions for the Trial Preparation Conference, KSC-BC-2023-12/F00567, Confidential, 24 November 2025, paras 10-11; Smakaj Submissions for the Trial Preparation Conference, KSC-BC-2023-12/F00565, Confidential, 24 November 2025, paras 8-9; Fazliu Trial Preparation Submissions, KSC-BC-2023-12/F00570 24 November 2025, para. 7 (agreeing 'in principle' with the Case 10 witness familiarisation procedure while flagging the potential need for 'minor modification').

³ Public redacted version of 'Prosecution submissions pursuant to F00549', KSC-BC-2023-12/F00559/RED, 26 November 2025 (Original dated 20 November 2025), para.30.

⁴ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

⁵ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule' or 'Rules' are to the Rules.

in the KSC-BC-2020-07 ('Case 7') Conduct of Proceedings Order⁶ in order to ensure expeditious, judicious, and fair proceedings in the present case. As detailed below, during productive *inter partes* discussions, four of the five Defence teams in this case informed the SPO they have no objection to or take no position on adopting the Case 7 Witness Preparation Procedure in this case.⁷

A. CASE 10 WITNESS FAMILIARISATION PROCEDURE

3. The SPO does not oppose the adoption of the Case 10 Witness Familiarisation Procedure, but underscores three specific caveats that are required in order to harmonise the Case 10 Witness Familiarisation Procedure with the present case: (i) a readjustment of the timing of sequenced events envisioned in the Case 10 Witness Familiarisation Procedure, (ii) modification to ensure that the SPO is able to maintain regular contact with Witnesses 7 and 9 or similarly situated witnesses pertaining to matters not related to this case following the relevant communication cut-off date, and (iii) that, as the Case 10 Witness Familiarisation Procedure is silent on the matter, including a cut-off date for contacts with witnesses located in the Netherlands as the moment the witness takes the solemn declaration under Rule 141(2) or 149(5), as adopted in Case 7.

1. Adjustment of timelines in the Case 10 Witness Familiarisation Procedure

4. The Case 10 Witness Familiarisation Procedure includes various deadlines pertaining to, *inter alia*, the completion and sharing of Witness Information Forms (WIFs) and Witness Appearance Lists ('WAL').⁸ The SPO does not oppose these

⁶ Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-07/F00314/A01, 17 September 2021 ('Case 7 Conduct of Proceedings Order'), paras 42-56. Paragraphs 42-56 of the Case 7 Conduct of Proceedings Order hereinafter refers to the 'Case 7 Witness Preparation Framework'.

⁷ The SPO conferred with the Parties via *inter partes* discussion; all Defence teams but the Fazliu Defence have communicated that they do not oppose or do not take a position on the inclusion of the Case 7 Witness Preparation Procedure.

⁸ Case 10 Familiarisation Decision, KSC-BC-2023-10/F00595, para.24.

deadlines in principle, but submits that some flexibility, including shortened timelines, may better facilitate expeditious proceedings.

2. Allowance for non-Case 12 related communication between the SPO and SPO affiliated witnesses to continue following cut-off date

5. The SPO submits that the Case 10 Witness Familiarisation Procedure should be amended to allow for the continuation of contact between the SPO and witnesses employed or contracted to work for the SPO on non-Case 12 related matters from the relevant communication cut-off date⁹ through the duration of their testimony. Similar to SPO witnesses in Case 7¹⁰ but unlike the two witnesses notified to appear in Case 10,¹¹ in the present case, two of the witnesses to be called by the SPO are employed or contracted by the SPO and need to remain in contact with the SPO during the course of their testimony on multiple non-Case 12 matters.

6. Restricting all contact between the SPO and witnesses employed or contracted to work with the SPO from the relevant communication cut-off date through the end of their testimony would negatively and unnecessarily impact the SPO's non-Case 12 essential operational functions. Witness 7, as the [REDACTED], must be able to continue his duties not related to this case in order to [REDACTED]. Witness 9 is currently contracted by the SPO to perform [REDACTED] on issues and matters not relevant to this case but necessary to the SPO's continued duties and responsibilities.

7. As such, and in line with the approach undertaken in Case 7,¹² the SPO submits that all non-Case 12 communications should be allowed to continue with Witness 7

⁹ As discussed below, the Case 10 Witness Familiarisation Procedure only partially addresses cut-off dates for communications between the witness and calling Party and requires further amendment.

¹⁰ See Annex 1 to Prosecution submission of list of anticipated witnesses, KSC-BC-2020-07/F00347/A01, 1 October 2021, pp 2-3.

¹¹ In Case 10, the SPO anticipated calling two witnesses, both of whom were 'present for the approaches by the Accused and expressed feeling of fear in connection with the Accused's actions'. Prosecution submissions in advance of trial preparation conferences with confidential Annex 1, KSC-BC-2023-10/F00491RED, 1 October 2024, paras 20, 24.

¹² Case 7 Conduct of Proceedings Order, KSC-BC-2020-07/F00314/A01, para.41(i)(c) ('Witnesses 04841 and 04842, notwithstanding the aforementioned cut-off date, can still conduct their ordinary duties with SPO and speak with their colleagues about matters not related to the present case').

and Witness 9¹³ (or any other similarly situated witness that may be called) from the relevant cut-off date through the end of their testimony to prevent any undue negative impact other necessary SPO matters not related to this case.

3. Contact cut-off date for witnesses present in the Netherlands as the moment of the witness' solemn declaration

8. The SPO does not oppose the communication cut-off dates outlined in the Case 10 Witness Familiarisation Procedure.¹⁴ However, as the Case 10 Witness Familiarisation Procedure is silent as to when communications should cease between the calling Party and witnesses located in the Netherlands, additional modification is required. The SPO submits that the STJ should adopt the approach undertaken in Case 7 with regard to witnesses that fall in this category, or incorporating a cut-off date of when the witness undertakes the solemn declaration under Rule 141(2) or 149(5),¹⁵ subject to the additional caveat pertaining to SPO employed or contracted witnesses as noted above.

B. INCORPORATION OF THE CASE 7 WITNESS PREPARATION PROCEDURE

9. The SPO further submits that the Case 7 Witness Preparation Procedure as outlined in the Case 7 Conduct of Proceedings Order¹⁶ should be adopted in the present case to ensure expeditious and fair proceedings. While the Case 10 Trial Panel declined to adopt witness preparation procedures, the SPO underscores that it is within the STJ's discretion to adopt measures to ensure the expeditious conduct of proceedings. Doing so would also align with approaches undertaken by not only the

¹³ The SPO further emphasises that Witness 9 is presently continuing to provide [REDACTED] on Case 12 related matters, the progress of which is dependent on [REDACTED]. As such, communication on Case 12 related matters is necessary up to and until the relevant [REDACTED] is completed.

¹⁴ Case 10 Familiarisation Decision, KSC-BC-2023/F00595, para.30 (providing a cut-off in communication between the calling Party and witness as 'the witness's arrival in the Netherlands', or, in the instance the testimony takes place via video conference at another location or away from the trial venue, as the date of the witness' arrival at the location of testimony or, if applicable, WPSO's arrival at the location of testimony).

¹⁵ Compare Case 10 Familiarisation Decision, KSC-BC-2023-10/F00595, para.30 with Case 7 Conduct of Proceedings Order, KSC-BC-2020-07/F00314/A01, para.41(i)(b).

¹⁶ See Case 7 Conduct of Proceedings Order, KSC-BC-2020-07/F00314/A01, paras 42-56.

Case 7 Trial Panel, but also the KSC-BC-2020-06 ('Case 6') Trial Panel. Importantly, four of the five Defence teams have informed the SPO *inter partes* that they either do not object to or take no position on the adoption of the Case 6 Witness Preparation protocol being adopted in this case.¹⁷

10. As underscored by both the Case 6 and Case 7 Trial Panels, allowing for witness preparation ensures that a witness 'gives relevant, accurate and structured testimony' and further allows 'the calling Party to assess and clarify the witness's evidence in order to facilitate the focused, efficient and effective questioning of the witness during the proceedings.'¹⁸ In the present case, some of the witnesses to be called will be examined regarding extensive documentary materials spanning several years. Witness preparation as envisioned in the Case 7 Witness Preparation Procedure would help ensure a streamlined, time effective, and efficient examination not sufficiently addressed by the present Case 10 Witness Familiarisation Procedure. Adopting the Case 7 Witness Preparation Procedure – which is largely identical to the framework followed in Case 6¹⁹ – would be consistent with amendments to Kosovo's Criminal Procedure²⁰ and would model similar approaches undertaken before other international tribunals to ensure judicious proceedings.²¹

¹⁷ The SPO notes that, in connection with *inter partes* discussions, only the Fazliu Defence has communicated their objection to the incorporation of the Case 7 Witness Preparation Framework.

¹⁸ Case 7 Conduct of Proceedings Order, KSC-BC-2020-07/F00314/A01, para. 43; *see also* Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Case 6 Conduct of Proceedings Order'), para.86.

¹⁹ *Compare* Case 6 Conduct of Proceedings Order, KSC-BC-2020-06/F01226/A01, paras 85-99 *with* Case 7 Conduct of Proceedings Order, KSC-BC-2020-07/F00314/A01, paras 42-56.

²⁰ Article 121 of the Kosovo Criminal Procedure Code 2022, Law No. 08/L-032 ('Nothing in this Code precludes the parties from meeting with their witnesses prior to being heard as a witness at the main trial to reconfirm or clarify information provided in the pretrial interviews, pretrial testimony or special investigative opportunity, or to inform the witness about the court rules and the course of the process during the main trial').

²¹ *See e.g.* ICTY, *Prosecutor v. Limaj*, IT-03-66-T, Decision on Defence Motion on Prosecution Practice of "Proofing" Witnesses, 10 December 2004, p.3 (noting that such a practice is 'an accepted and well-established practice of this Tribunal, one which serves several important functions for witnesses and for the judicial process'); ICTR, *Prosecutor v. Karemera et al.*, Decision on Defence Motions to Prohibit Witness Proofing, ICTR-98-44-T, 15 December 2006, paras 11-15. The SPO notes that even in the more

11. Incorporating the Case 7 Witness Preparation Procedure into the present case is further supported by the specificity with which it addresses the scope and confines of witness preparation so as to ensure adequate fair trial safeguards are enshrined and respected. For example, the Case 7 Witness Preparation Procedure underscores, *inter alia*, the prohibition of influencing witnesses and provides clear guidance as to what questions may not be asked, that preparation must be carried out 'in good faith', notes the ability for a witness' legal adviser to attend a preparation session, specifies when a preparation session may take place (*i.e.*, *after* witness statements have been taken), explains how preparation sessions must be recorded and communicated to other Parties, and further details how and when information subject to a calling Party's disclosure obligations that arose from the preparation session must be communicated.²²

12. The specificity with which the Case 7 Witness Preparation Procedure dictates how witness preparation sessions may be conducted coupled with the fact that such sessions would ensure more effective and expeditious proceedings underscores the utility of its adoption in the present case. It follows that the Case 7 Witness Preparation Procedure should be adopted by the STJ.

III. CONFIDENTIALITY

13. This filing classified as confidential because of the sensitive information contained therein. A public redacted version will be filed in due course.

restrictive framework of the ICC, several trial chambers' have allowed for witness preparation. *See e.g.* ICC, *Prosecutor v. Ntaganda*, Decision on witness preparation, ICC-01/04-02/06, 16 June 2015, paras 17-18 (noting the utility of witness preparation in advancing 'the fairness and expeditiousness of trial' while 'at the same time help[ing] protect the well-being of witnesses' particularly when considering the 'complexity of the present case', how far back the events in question date, and the large number of exhibits in the case); *see also* ICC, *Prosecutor v. Al Hassan Ag Aboud Aziz Ag Mohamed Ag Mahmoud*, ICC-01/12-01/18, Decision on witness preparation and familiarisation, 17 March 2020, para.15 (underscoring that witness preparation would facilitate clear and expeditious testimony not only for the testimony in chief, but 'for the entire questioning of a witness').

²² Case 7 Conduct of Proceedings Order, KSC-BC-2020-07/F00314/A01, paras 44-45, 48, 50, 51-53, 55.

IV. RELIEF REQUESTED

14. For the reasons above, the Single Trial Judge should authorise the Parties to the follow the Case 10 Witness Familiarisation Procedure, subject to the aforementioned caveats described in paragraphs 3-8, and should similarly incorporate the Case 7 Witness Preparation Procedure as reflected in paragraphs 42-56 of the Case 7 Conduct of Proceedings Order into the present case.

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At The Hague, the Netherlands