



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: 2 October 2023

Language: English

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**Public Redacted Version of 'Prosecution request for video-conference testimony
for W04448 and related matters'**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Article 40(2) of the Law,¹ Rules 141(1) and 144 of the Rules,² and the Practice Direction,³ the Specialist Prosecutor's Office ('SPO') requests the Trial Panel to authorise the testimony of W04448 to take place by video-conference from a [REDACTED].⁴

2. W04448 is scheduled to appear as the last witness during the 9-19 October 2023 evidentiary block. In light of his personal circumstances, video-conference testimony is needed to facilitate W04448's testimony in an expeditious manner and to ensure his security and well-being. The requested measures are necessary, proportionate and would not result in undue prejudice to the Accused as the Defence will be fully able to cross-examine the witness.

3. As set out below, this request is being made at the earliest opportunity following relevant consultations with the [REDACTED] authorities. In light of the logistical implications and the anticipated timing of W04448's testimony, the SPO requests an expedited briefing schedule.

II. SUBMISSIONS

A. VIDEO-CONFERENCE REQUEST

4. 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

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 The [REDACTED] authorities are currently in the process of confirming whether a suitable [REDACTED], with appropriate technical and security capabilities is available. If not, the [REDACTED] authorities will assist in identifying another suitable location.

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 must not be prejudicial to or inconsistent with the rights of the accused. No additional criteria are warranted.⁵

5. Video-conference testimony should not be considered only on an exceptional basis.⁶ 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.⁷ These factors may also include procedural considerations, including the efficient conduct of the proceedings.⁸

6. W04448's evidence primarily relates to the structure and organisation of the KLA at [REDACTED], and in the [REDACTED], and the targeting, detention, interrogation, and mistreatment of alleged spies, collaborators, and other opponents at or around such locations.

7. W04448 is a Rule 154 witness that the SPO intends to call last during the 9-19 October 2023 evidentiary block. He has confirmed his availability and willingness to testify. However, W04448, who resides in [REDACTED], does not have travel documents and the SPO has exhausted reasonable efforts to secure necessary documents and authorisation from the [REDACTED] authorities. On 29 September 2023, after several weeks of consultations, the [REDACTED] authorities confirmed that they are unable to provide such documents and authorisation in the foreseeable future for the reasons set out below. Instead, the [REDACTED] authorities are willing

⁵ *Specialist Prosecutor v. Shala*, 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.

⁶ 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.

⁷ Decision F01776, KSC-BC-2020-06/F01776, para.12; Decision F01558, KSC-BC-2020-06/F01558, para.16. See also *Specialist Prosecutor v. Gucati and Haradinaj*, KSC-BC-2020-07, Transcript, 14 January 2022, p.3034.

⁸ *Shala Decision*, KSC-BC-2020-04/F00482/RED, para.14.

to facilitate his video-conference testimony from a suitable [REDACTED] or other location.⁹

8. [REDACTED]. [REDACTED], W04448 does not have travel documents.¹⁰ W04448 will only be able to obtain appropriate travel documents and authorisation following [REDACTED].¹¹ [REDACTED]. There are no indications it will be resolved in the near future. Thus, if he were to travel to The Hague under current circumstances, he would face challenges [REDACTED]. This would threaten, *inter alia*, the witness's (i) well-being, potentially resulting in his inability to [REDACTED]; and (ii) security, [REDACTED]. Accordingly, video-conference will enable the witness to provide his testimony free from undue anxiety and stress, and [REDACTED] that could arise from his travel to The Hague, and the related impact on his well-being and security, and that of his family.

9. In addition, video-conference would enable a reasonable and justified degree of flexibility in scheduling. The SPO's decision to notify W04448 as the last witness in the 9-19 October 2023 evidentiary block accounts for a history of significant reductions in Defence cross-examination estimates.¹² Indeed, if the estimates for the first three scheduled witnesses in the 9-19 October 2023 evidentiary block were accurate (and even allowing for a five hour total reduction in direct and cross-examination times for W03880, W04577, and W04769¹³), then W04448 would not be called during this evidentiary block. In such circumstances, video-conference would not only avoid the risks outlined above, but also permit scheduling flexibility and avoid unnecessary use of time and resources.

⁹ See para.1 and fn.4 above.

¹⁰ [REDACTED].

¹¹ The [REDACTED] authorities are not willing to authorise [REDACTED].

¹² See, for example, Prosecution response to THAÇI and SELIMI Defence request to postpone reserve witnesses, KSC-BC-2020-06/F01820, 27 September 2023, Confidential, paras 3-4.

¹³ The combined direct and cross-examination estimate for these three witnesses is 45 hours or nine sitting days (there are eight planned sitting days during the 9-19 October 2023 evidentiary block). The total direct and cross estimate for W03880 is 9.5 hours or roughly two sitting days (SPO: 1.5 hours; Defence: 8 hours total). The total direct and cross estimate for W04577 is 19.5 hours or roughly four sitting days (SPO: 4 hours; Defence: 15.5 hours). The total direct and cross estimate for W04769 is 15.5 hours or roughly three sitting days (SPO: 2 hours; Defence: 13.5 hours).

10. Granting the Request would not be prejudicial to or inconsistent with the rights of the Accused.¹⁴ The available technology allows for W04448 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 and assess his credibility. There are no substantial differences between the two modes of testimony in this regard.

11. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) W04448 is anticipated to appear the week of 16 October 2023; (ii) the expected duration of direct examination is 3 hours (the total estimate for cross-examination is 12 hours);¹⁵ (iii) the SPO requests W04448 to appear via video-link from [REDACTED]; (iv) W04448 does not have in-court protective measures and the SPO is not aware of any special needs; and (v) W04448 will testify in [REDACTED].¹⁶ The SPO remains available should the Registry require any further information.

B. ALTERED SITTING SCHEDULE AND RELATED REQUESTS

12. Given the [REDACTED] time difference between The Hague and the proposed video-conference location, an altered sitting schedule would be required. The [REDACTED] authorities have indicated that the earliest time testimony can be accommodated at a [REDACTED] (15.00 in The Hague).¹⁷

13. In light of this start time, the SPO defers to the Panel as to the appropriate sitting schedule. However, considering the resource requirements of an altered sitting schedule, including the likely need to sit after normal business hours, the SPO requests that there be no other hearings in this case on the relevant days. Further, given the

¹⁴ See Decision F01776, KSC-BC-2020-06/F01776, para.15.

¹⁵ KSC-BC-2020-06/F01630/A02, p.64; KSC-BC-2020-06/F01694/A10 (Thaçi Defence: 6 hours; Veseli Defence: 2.5 hours; Selimi Defence: 2 hours; Krasniqi Defence: 1.5 hours).

¹⁶ He is fluent in [REDACTED].

¹⁷ An earlier start time may be possible if a suitable, alternative location is identified.

logistical arrangements required to facilitate this testimony, including by third state authorities, it is particularly important that examination estimates for the 9-19 October block are as accurate as possible. As such, the SPO requests that the Defence be ordered to carefully¹⁸ review and, as relevant, revise cross-examination estimates for each of the four witnesses scheduled for the 9-19 October hearing block so that any necessary adjustments to the schedule can be incorporated into the planning.

III. CLASSIFICATION

14. This filing is confidential pursuant to Rule 82(4), to protect W04448, whose identity is confidential at this stage, and because it contains personal information concerning W04448.

IV. RELIEF REQUESTED

15. For the reasons set out above, the SPO requests that the Panel: (i) order an expedited briefing schedule; (ii) grant the requests for video-conference testimony and an altered sitting schedule; and (iii) order the Defence to revise their cross-examination estimates for the witnesses anticipated to be called during the 9-19 October 2023 evidentiary block and promptly notify those revised estimates to the Panel, Parties, and participants.

¹⁸ The last time the Defence teams were ordered to revise their cross-examination estimates, it resulted in substantial reductions; however, certain revised estimates still proved significantly inaccurate. For example, the THAÇI Defence originally estimated eight hours for W03879, revised this estimate to five hours when ordered, and ultimately cross-examined the witness for less than three hours. The KRASNIQI Defence originally estimated four hours for W03879, revised this estimate to three hours when ordered, and ultimately did not cross-examine the witness. *See* Email from THAÇI Defence to Panel, Parties, and participants dated 4 August 2023 at 15.47; Email from KRASNIQI Defence to Panel, Parties, and participants dated 4 August 2023 at 15.44. These emails also included revised estimates for, *inter alia*, W03832, W00072, and W04018, certain of which proved substantially inaccurate when compared against actual cross-examination times. *See also* Email from VESELI Defence to Panel, Parties, and participants dated 4 August 2023 at 17.51; Email from SELIMI Defence to Panel, Parties, and participants dated 4 August 2023 at 22.05.

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Acting Deputy Specialist Prosecutor

Monday, 2 October 2023

At The Hague, the Netherlands.