



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:** 16 October 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Prosecution request for the video-conference testimony of W01493'**

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## I. INTRODUCTION

1. Pursuant to Article 40(2) of the Law,<sup>1</sup> Rules 141(1) and 144 of the Rules,<sup>2</sup> and the Practice Direction on Video Links,<sup>3</sup> the Specialist Prosecutor's Office ('SPO') requests the Trial Panel to authorise the testimony of W01493 via video-conference from an appropriate law enforcement or other government building in [REDACTED].<sup>4</sup>

2. Based on current examination estimates, the SPO intends to call W01493 the week of 13 November 2023.<sup>5</sup> In light of W01493's personal circumstances, video-conference testimony is needed to ensure the witness's health and well-being, and to facilitate the testimony in an expeditious manner. Video-conference testimony is therefore appropriate and will not result in undue prejudice to the Accused because the Defence will be able to properly cross-examine the witness.

## II. SUBMISSIONS

3. W01493's evidence relates primarily to the KLA's targeting of alleged collaborators and opponents, and the witness's observations of KLA members in [REDACTED] in Kosovo during the Indictment period.

4. Pursuant to Article 3 of the Practice Direction on Video Links, the SPO provides the following additional information: (i) W01493 is provisionally anticipated to appear the week of 13 November 2023; (ii) the expected duration of direct examination is 4

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<sup>1</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>2</sup> 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.

<sup>3</sup> Registry Practice Direction on Video Links, KSC-BD-23/COR, 17 July 2020 as corrected on 5 August 2020 ('Practice Direction on Video Links').

<sup>4</sup> Based on preliminary consultations, the [REDACTED] authorities have indicated that, upon receipt of a formal request for assistance, they would identify an appropriate location taking into account any necessary technical, security, and other requirements.

<sup>5</sup> This date is provisional, depending on the outcome of this request and other scheduling and logistical matters relating to this and other witnesses anticipated to testify between 30 October and 13 December 2023. The SPO will provide notice of any change as soon as practicable and in accordance with the deadlines set in paragraphs 77-78 of the Order on the Conduct of Proceedings (KSC-BC-2020-06/F01226/A01). *See also* KSC-BC-2020-06/F01828/A01.

hours (the total estimate for cross-examination is 14 hours);<sup>6</sup> (iii) the SPO requests W01493 to appear via video-link from a suitable law enforcement or other government building [REDACTED]; (iv) W01493 has been granted in-court protective measures,<sup>7</sup> and, while the witness has certain mobility and health issues outlined below, the SPO is not aware of any special needs during his testimony; and (v) W01493 will testify [REDACTED].

5. The three conditions set out by Rules 141(1) and 144 for granting video-conference testimony have been met for W01493.<sup>8</sup> First, while in-court testimony is preferred, the video-conference technology in use will allow a proper examination of W01493. The witness will take the solemn declaration and testify in real-time in the presence of the Parties and Panel who will be able to question the witness, observe the witness's demeanour, and assess the witness's credibility as if W01493 were physically present in the courtroom. Second, as indicated by the [REDACTED] authorities, the venue chosen for the video-conference will be conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness. Third, because there is little, if any, qualitative difference between examining a witness in the courtroom and examining them via video-conference,<sup>9</sup> allowing W01493 to testify via video-conference will not be prejudicial to

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<sup>6</sup> Annex 9 to Additional Joint Defence Response to Prosecution Submission of List of the Next 12 Witnesses, Reserve Witnesses and Associated Information, KSC-BC-2020-06/F01694/A09, Confidential, 21 July 2023, p.2; (Thaçi Defence: 7 hours; Veseli Defence: 2.5 hours; Selimi Defence: 1.5 hours; Krasniqi Defence: 3 hours). The SPO is mindful of the Panel's instructions regarding the direct examination estimate for this witness and will confirm that its direct examination can be limited to two hours (as encouraged by the Panel) as soon as practicable. See Corrected Version of Decision on Second Prosecution Motion Pursuant to Rule 154, KSC-BC-2020-06/F01595/COR, 9 June 2023, Confidential, para.85.

<sup>7</sup> Confidential Redacted Version of Decision on Prosecution Rule 102(2) Submission and Related Requests, KSC-BC-2020-06-F01057, Confidential, 27 October 2022, para.58.

<sup>8</sup> The applicable law has been set out in previous submissions and decisions. See, *inter alia*, Decision on Prosecution Request for Video-Conference Testimony for W04448 and Related Matters, KSC-BC-2020-06/F01851, 11 October 2023, Confidential, paras 8-9.

<sup>9</sup> ICC, *Prosecutor v. Said*, ICC-01/14-01/21, Decision on the Use of Audio-Video Link Technology, 4 August 2022, paras 13-14. See also IRMCT, *Prosecutor v. Kabuga*, MICT-13-38-T, Decision on Prosecution Motion for Video-Conference Link, 12 October 2022, paras 8-11 (setting out the evolution of the ICTY, ICTR, and IRMCT Rules, resulting in the current framework where 'there is no principle [...] that witnesses first and foremost must appear directly in court').

or inconsistent with the rights of the Accused who will be able to properly cross-examine and confront W01493.

6. The SPO requests that W01493's testimony be received by means of video-conference primarily due to concerns about the witness's physical health and psychological well-being. W01493 suffers from serious health conditions which are likely to be exacerbated by travel to The Hague. W01493 first notified the SPO of health issues [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED], W01493 reported to the SPO that his health conditions had significantly worsened over the last two years, and stated once again that because of his poor health, he would not travel to The Hague.

7. [REDACTED]. [REDACTED]. [REDACTED], and is unwilling to leave his country of residence. [REDACTED] are well-grounded and have already had a negative impact on the witness's psychological well-being, which is likely to be made worse if the witness is required to travel to The Hague. W01493 has indicated on multiple occasions that he will not travel to The Hague willingly, and [REDACTED]. In this respect, over the last months, the SPO has explored ways to facilitate W01493's travel with the [REDACTED] authorities; however, in particular in light of his unwillingness, no alternatives to video-conference have been identified.

8. Although W01493 has refused to travel to The Hague because of the anticipated negative impact on his physical health and psychological well-being, he has stated repeatedly that he is available and willing to testify via video-conference. Granting video-conference testimony would allow W01493 to provide evidence from [REDACTED] where he would be able to receive all necessary medical care from familiar and trusted medical personnel, and be free from the significant physical and mental stress caused by travelling to The Hague.

### III. CLASSIFICATION

9. This filing is strictly confidential and *ex parte* pursuant to Rule 82(3), to protect W01493, and because it contains sensitive personal information about W01493.

IV. RELIEF REQUESTED

10. For the reasons set out above, the SPO requests the Panel to authorise video-conference testimony for W01493.

**Word Count: 1374**

/signed/

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**Ward Ferdinandusse**

**Acting Deputy Specialist Prosecutor**

Monday, 16 October 2023

At The Hague, the Netherlands.