



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:** 20 November 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Prosecution request for the video-conference testimony of W01140'**

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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 W01140 via video-conference from an appropriate location in [REDACTED].<sup>4</sup>

2. W01140 is a reserve witness for the evidentiary block commencing on 4 December 2023 and based on current estimates, the SPO expects that his testimony may occur on [REDACTED] 2023.<sup>5</sup> In light of W01140'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. W01140's evidence relates to his detention and mistreatment by KLA members in [REDACTED] 1999. His evidence is the subject of a pending Rule 154 Request.<sup>6</sup>

4. Pursuant to Article 3 of the Practice Direction on Video Links, the SPO provides the following additional information: (i) W01140 is provisionally anticipated to appear

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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] are likely to be made available for testimony by video-conference link.

<sup>5</sup> These dates are provisional, depending on the outcome of this request and other scheduling and logistical matters relating to this and other witnesses anticipated to testify during these two weeks. 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* Annex 1 to Prosecution submission of list of additional witnesses for December 2023, KSC-BC-2020-06/F01932/A01, 16 November 2023 ('December Witness List').

<sup>6</sup> Prosecution motion for admission of evidence of Witnesses W00498, W01140, and W01763 pursuant to Rule 154, KSC-BC-2020-06/F01931, 16 November 2023 ('Rule 154 Request'), paras 13-21.

on [REDACTED] 2023; (ii) the expected duration of direct examination is 1.5 hours;<sup>7</sup> (iii) the SPO requests W01140 to appear via video-link from a suitable location in [REDACTED]; (iv) W01140 has been granted in-court protective measures,<sup>8</sup> and, while the witness has certain [REDACTED] issues outlined below, the SPO is not aware of any special needs during his testimony; and (v) W01140 will testify in [REDACTED].

5. The three conditions set out by Rules 141(1) and 144 for granting video-conference testimony have been met for W01140.<sup>9</sup> First, while in-court testimony is preferred, the video-conference technology in use will allow a proper examination of W01140. 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 W01140 were physically present in the courtroom. Second, 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>10</sup> allowing W01140 to testify via video-conference will not be prejudicial to or inconsistent with the rights of the Accused who will be able to properly cross-examine and confront W01140. Further, as the Panel has

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<sup>7</sup> December Witness List, KSC-BC-2020-06/F01932/A01, p.12; Rule 154 Request, KSC-BC-2020-06/F01931, para.21.

<sup>8</sup> Confidential Redacted Version of Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06-F00133/COR/CONF/RED, Confidential, 10 December 2020, para.132(q).

<sup>9</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>10</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').

previously noted, a degree of flexibility is warranted in particular regarding matters of scheduling for reserve witnesses, given their nature.<sup>11</sup>

6. The SPO requests that W01140's testimony be received by means of video-conference primarily due to concerns about the witness's [REDACTED] well-being. W01140 suffers from serious health conditions which are likely to be exacerbated by travel to The Hague. In addition to taking medication for [REDACTED] and [REDACTED], the witness has constant and persistent problems with his [REDACTED], which impair his mobility and have necessitated numerous medical interventions and continuous monitoring by a [REDACTED] surgeon.<sup>12</sup> He has been forced to take multiple extended absences from work due to the periodic worsening of the [REDACTED].

7. W01140 also has [REDACTED], which includes a [REDACTED], of [REDACTED], and [REDACTED], and he has made repeated requests to testify via video-link, citing his poor health and a [REDACTED]. W01140 further explained to the SPO that [REDACTED].

8. Granting video-conference testimony would allow W01140 to provide evidence from his country of residence without the significant physical and mental stress caused by travelling to The Hague. Considering the witness's specific medical and mobility issues, testimony via video-conference would be more appropriate and conducive to his well-being and improve the quality of his evidence. Furthermore, given the tendency of his conditions to suddenly worsen, it would be in his interest to remain close to the physicians overseeing his care. Noting that reserve witnesses must be ready to testify on short notice, having W01140 available via video-conference will also better allow his evidence to fill gaps in the schedule, and will avoid a scenario

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<sup>11</sup> KSC-BC-2020-06, Oral Order authorizing Witness 04586's testimony to take place via video-conference, 14 July 2023, Transcript, p.5802-5803.

<sup>12</sup> The witness informed the SPO that due to his physical conditions, in particular related to [REDACTED], he has [REDACTED] and experiences [REDACTED].

whereby he endures the ordeal of travel to The Hague and is not able to complete his testimony in the December evidentiary block.

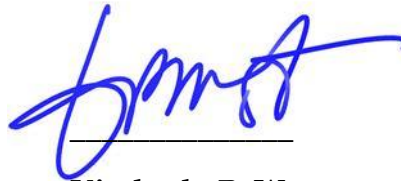
III. CLASSIFICATION

9. This filing is confidential pursuant to Rule 82(3), since it contains personal information about W01140.

IV. RELIEF REQUESTED

10. For the reasons set out above, the SPO requests the Panel to authorise video-conference testimony for W01140.

**Word Count: 1156**



**Kimberly P. West**

**Specialist Prosecutor**

Monday, 20 November 2023

At The Hague, the Netherlands.