



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: 27 February 2024

Language: English

Classification: Public

Public Redacted Version of

'Prosecution request for video-conference testimony for W03878'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Articles 23(1) and 40(2) of the Law,¹ and Rules 80, 141(1) and 144 of the Rules,² and noting the Registry Practice Direction on Video Links,³ the Specialist Prosecutor's Office ('SPO') requests the Trial Panel to authorise the testimony of W03878 to take place by video-conference from [REDACTED] Kosovo ('Request').

2. Based on current examination estimates, the SPO intends to call W03878 on or about 19-20 March. In light of W03878'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 would not result in undue prejudice to the Accused as the Defence will be fully able to cross-examine the witness.

II. SUBMISSIONS

3. 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 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.⁴

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 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.

4. Video-link testimony should not be considered only on an exceptional basis.⁵ 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.⁶ These factors may also include procedural considerations, including the efficient conduct of the proceedings,⁷ and a degree of flexibility is warranted in particular regarding matters of scheduling for reserve witnesses, given their nature.⁸

5. W03878 is a Rule 154 witness whose evidence relates to crimes alleged to have occurred in [REDACTED], specifically W03878's detention and mistreatment by the KLA in early 1999.

6. W03878 was scheduled to testify live on or about 26 February 2024 and arrived in The Hague on 22 February 2024 for this purpose. [REDACTED] On 25 and 26 February, WPSO met with W03878 and recommended that he not testify and return to Kosovo in light of these developments and the impact on W03878's health. [REDACTED].⁹

7. In these circumstances, given W03878's reported and observed health issues, the burden of having already travelled to The Hague, and [REDACTED], video-conference is most consistent with minimising the risk of harm and facilitating the witness's truthful and open testimony. For these reasons, participating via video-link

⁵ 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.

⁶ Decision F01776, KSC-BC-2020-06/F01776, para.12; Decision F01558, KSC-BC-2020-06/F01558, para.16. See also KSC-BC-2020-07, Transcript of Hearing, 14 January 2022, p. 3034, lines 6-10.

⁷ *Shala* Decision, KSC-BC-2020-04/F00482/RED, para.14.

⁸ Oral Order authorizing Witness W04586's testimony to take place via video-conference, 14 July 2023, Transcript, p.5802-5803.

⁹ Email from the SPO, 26 February 2024, at 12:44.

will improve the quality of W03878's evidence, and ensure his physical and psychological well-being.¹⁰

8. Granting the Request would also not be prejudicial to or inconsistent with the rights of the Accused.¹¹ The available technology allows for W03878 to be examined under the same conditions as he would be in the courtroom.¹² 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.

9. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) W03878 may appear during the March 2024 evidentiary block (on or about 19-20 March); (ii) the expected duration of direct examination of W03878 is no more than 1 hour; (iii) the SPO requests W03878 to appear via video-conference from [REDACTED] Kosovo; (iv) due to his health, the witness is anticipated to require reading assistance and may require breaks during testimony; and (v) W03878 will testify in Albanian. The SPO remains available should the Registry require any further information.

III. CLASSIFICATION

10. This filing is confidential pursuant to Rule 82(3) since it contains personal information concerning W03878.

IV. RELIEF REQUESTED

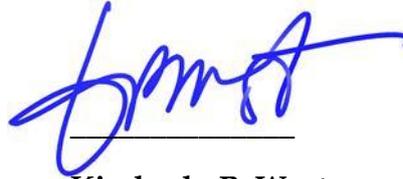
11. For the reasons set out above, the SPO requests that the Panel grant the Request for video-conference testimony.

¹⁰ See *Shala* Decision, KSC-BC-2020-04/F00482/RED, para.18; Decision F01776, KSC-BC-2020-06/F01776, para.14.

¹¹ See Decision F01776, KSC-BC-2020-06/F01776, para.15.

¹² See also para.**Error! Reference source not found.** above.

Word Count: 966



Kimberly P. West

Specialist Prosecutor

Tuesday, 27 February 2024

At The Hague, the Netherlands.