



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: 11 March 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution request for video-conference testimony for W04571 with confidential annexes 1-3'

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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 W04571 to take place by video-conference from [REDACTED], Kosovo ('Request').

2. Given that W04571 is a reserve witness for the upcoming evidentiary block, it is currently unclear when the SPO may need to call him to testify. However, it is possible the SPO may need to call W04571 to testify as early as 20 March 2024. In light of W04571'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. W04571 is a Rule 154 witness whose evidence relates to crimes alleged to have occurred in [REDACTED].

6. W04571 was notified as a reserve witness for the evidentiary block of 30 October to 13 December 2023.⁹ At the end of last year, [REDACTED].

7. After W04571 confirmed his availability to testify in The Hague for the upcoming evidentiary block,¹⁰ W04571 was notified as a reserve witness therefor.¹¹ However, [REDACTED]; he has also been unable to identify anyone available to travel with him or to provide support to him.¹² W04571 has noted that this situation makes

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; Oral Order authorising Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, p. 13063, lines 18-20.

⁶ Decision F01776, KSC-BC-2020-06/F01776, para.12; Decision F01558, KSC-BC-2020-06/F01558, para.16; Oral Order authorising Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, p. 13063, line 22 to p. 13064, line 1. *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 authorising Witness W04586's testimony to take place via video-conference, 14 July 2023, Transcript, pp.5802-5803.

⁹ ANNEX 2 to Prosecution submission of list of witnesses for 30 October to 13 December 2023, KSC-BC-2020-06/F01828/A02, 2 October 2023, Confidential, pp. 6-9.

¹⁰ Annex 1, 119411-119412 RED.

¹¹ Email from the SPO to the Panel, Parties and Participants dated 1 March 2024 at 13:32.

¹² Annex 2, 119413-119413.

it difficult for him to travel and expressed a strong preference to testify from Kosovo in view of his family circumstances and his current [REDACTED].¹³

8. In these circumstances, and considering W04571's status as a reserve witness, which renders the need for his testimony dependent on the progress of other witnesses' testimony, 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 will improve the quality of W04571's evidence, and ensure his physical and psychological well-being.¹⁴

9. Granting the Request would also not be prejudicial to or inconsistent with the rights of the Accused.¹⁵ The available technology allows for W04571 to be examined under the same conditions as he would be in the courtroom.¹⁶ 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.

10. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) W04571 may appear during the March 2024 evidentiary block, as early as 20 March; (ii) the expected duration of direct examination of W04571 is no more than 1 hour; (iii) the SPO requests W04571 to appear via video-conference from [REDACTED], Kosovo; (iv) due to his [REDACTED], the witness is anticipated to require reading assistance and may require breaks during testimony; and (v) W04571 will testify in Albanian. The SPO remains available should the Registry require any further information.

¹³ Annex 2, 119413-119413; Annex 3, 119414-119414.

¹⁴ See *Shala* Decision, KSC-BC-2020-04/F00482/RED, para.18; Decision F01776, KSC-BC-2020-06/F01776, para.14; Oral Order authorising Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, p. 13064, lines 2-5.

¹⁵ See Decision F01776, KSC-BC-2020-06/F01776, para.15; Oral Order authorising Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, p.13064, lines 6-9.

¹⁶ See *also* para.1 above.

III. CLASSIFICATION

11. This filing is confidential pursuant to Rule 82(3) since it contains personal information concerning W04571.

IV. RELIEF REQUESTED

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

Word Count: 1127



Kimberly P. West
Specialist Prosecutor

Monday, 11 March 2024

At The Hague, the Netherlands.