

Annex 69

Public

From: Trial Chamber X Communications
Sent: 26 March 2021 16:46
To: Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team
Cc: Trial Chamber X Communications; Chamber Decisions Communication; Associate Legal Officer-Court Officer
Subject: Decision on the Prosecution's request concerning the application of the witness preparation protocol in relation to P-0635

Dear counsel,

The Single Judge takes note of the Prosecution's request relating to the Witness Preparation Protocol (the 'Protocol').

Considering that the purpose of the meeting is the technical testing of P-0635 computer by the Registry, and that accordingly no substantive discussion will take place, the Single Judge clarifies that the Protocol does not apply. The recording of this session is therefore not mandated by the Protocol and no specific authorisation is required.

Further, and in light of the Prosecution's clarification that 'it has no intention to conduct an in-court demonstration', the Defence's separate request seeking that the session be recorded and disclosed to avoid a prejudice is also dismissed.

Kind regards,

On behalf of the Single Judge of Trial Chamber X

From: Dutertre, Gilles <Gilles.Dutertre[REDACTED]>
Sent: 25 March 2021 22:52
To: Taylor, Melinda <mtaylor[REDACTED]>; Trial Chamber X Communications <TrialChamberXCommunications[REDACTED]>; D28 Al Hassan Defence Team <D28AlHassanDefenceTeam[REDACTED]>; V43 Victims Al Hassan Team <V43LRVTeam[REDACTED]>
Cc: Al Hassan Prosecution Team <AlHassanProsecutionTeam[REDACTED]>
Subject: RE: P-0635

Dear Trial Chamber,

The Prosecution wishes to clarify that it has no intention to conduct an in-court demonstration during the examination in chief of P-0635.

The purpose of testing a computer is to give the expert witness a fair chance to respond properly to questions in case it is required in cross examination: P-0635 might want to open an annex, zoom on a detail, surf on a satellite picture, illustrate something mentioned in her report etc...

This is for a better understanding of the parties and the Chamber and is therefore in the interest of justice.

There is no prejudice to the Defence.

The Prosecution recalls that P-0064 used a computer in court (moreover in chief) and this did not lead to any problem.

Kind regards

Gilles Dutertre

From: Taylor, Melinda <[REDACTED]>
Sent: 25 March 2021 19:22
To: Dutertre, Gilles <[REDACTED]>; Trial Chamber X Communications <TrialChamberXCommunications[REDACTED]>; D28 Al Hassan Defence Team <D28AlHassanDefenceTeam[REDACTED]>; V43 Victims Al Hassan Team <V43LRVTeam[REDACTED]>

Cc: Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#) [REDACTED]>

Subject: RE: P-0635

Dear Trial Chamber X, Dear Prosecution,

The Defence respectfully observes that this is the first time that the Defence is receiving notice of the Prosecution's intention to conduct an in-court demonstration during the testimony of P-635.

In the omnibus decision on experts, the Trial Chamber authorised the Prosecution to conduct a streamlined examination of one hour (ICC-01/12-01/18-989-Conf, para. 112). This determination was based upon the Prosecution's submission that it would use its examination in chief to introduce the report, and discuss her methodology. The Prosecution request makes no mention of a software demonstration (ICC-01/12-01/18-851-Conf, para. 40).

The Defence thus has no notice as concerns either which software P-0635 plans to demonstrate or the manner in which she will do so. Without advance knowledge of such matters, the Defence cannot test or examine her processes or instruct an expert to do so. It would also be impossible for the Defence to react in a meaningful manner during the time allocated for cross-examination.

In order to avoid such prejudice, and in line with the procedure adopted for P-64, the Defence respectfully requests that the Prosecution either arrange for P-635 to provide the Defence a demonstration (sufficiently in advance of her testimony to allow for meaningful analysis on our part) or that the Prosecution records and discloses such a demonstration in advance of P-635's testimony. Either scenario could occur during this testing session.

Kind regards

Melinda Taylor, on behalf of the Al Hassan Defence

From: Dutertre, Gilles [REDACTED]

Sent: 25 March 2021 14:08

To: Trial Chamber X Communications; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team

Cc: Al Hassan Prosecution Team

Subject: P-0635

Dear Trial Chamber X,

The Prosecution asks for authorisation to forego the requirement to audio-video record contacts with expert witness P-0635, which would ordinarily be required during contacts under the terms of the Witness Preparation Protocol, during an online meeting to take place between the witness and Registry.

In particular, the Prosecution proposes that it is present when expert witness P-0635 undertakes an online Webex test, with Court Registry staff, of her link to the courtroom, to determine if her computer applications are compatible and able to be presented properly *via* AVL link during her testimony. Accordingly, the purpose of this contact is simply to be present for a technical test of her AVL link and compatibility of her laptop applications. There would be no discussion of her substantive testimony during that online meeting.

The Prosecution proposed that it not be present, but the Court Registry staff requested the presence of either the OTP or VWS.

This is without prejudice to the Trial Chamber approval that will be subsequently requested for P-0635 to use her computer during her testimony.

Best regards,

Gilles Dutertre



Gilles Dutertre

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