

Annex 42

Public

From: Trial Chamber X Communications
Sent: 24 February 2021 15:16
To: Taylor, Melinda
Cc: Al Hassan Prosecution Team; V43 Victims Al Hassan Team; D28 Al Hassan Defence Team; Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber X Communications
Subject: Decision on the Defence Request for authorisation to conduct cross-examination

Dear Counsel,

The Single Judge notes the Chamber's previous decision in which it determined that 'the accused's right to legal representation is ensured, inter alia, by the appearance in court, questioning of witnesses or the of making submissions only by counsel who meet the requirements for designation as such' and that this should be the rule (E-mail of Trial Chamber X on 24 September 2020 at 12:39, emphasis added). Pursuant to the aforesaid decision, the Defence is requesting such an exception and seeks leave for Mr Prezanti (the 'Legal Consultant') to cross-examine P-0641.

The Single Judge notes the Defence submissions that the Legal Consultant has been working on the preparation for the testimony of P-0641, who is due to testify on 17-19 March 2021. Although the Single Judge considers that Lead Counsel may distribute the work in a manner that members of the Defence team specialise in particular issues, this does not mean that these persons will cross-examine witnesses. A distinction must be made between preparing material for counsel (which may be done by any member of the Defence team) and cross-examination (which in principle should be carried out by a trained lawyer who meets the required standard).

Moreover, the Single Judge is not aware of any previous participation of the Legal Consultant on behalf of the Defence, either in the courtroom or via written submissions addressed to the Chamber. The Single Judge also notes that the current request is distinct from the previous occasion in which the Chamber authorised Mr Rowse to question P-0064, an expert whose evidence was limited to technical aspects. In the instant case P-0641 is a crime base witness who is expected to testify about alleged crimes and the armed groups. The examination-in-chief of P-0641 is estimated to last five hours. The Single Judge also observes that the witness is expected to testify in Songhai. Lastly, the Legal Consultant is expected to cross-examine the witness remotely from a location in the UK. In this regard, the Single Judge considers that remote cross-examination from a location in the UK with a witness also testifying remotely in Songhai could pose technical difficulties that may affect the smooth conduct of proceedings.

In light of the above, the Single Judge rejects the Defence request for the Legal Consultant to cross-examine P-0641.

Kind regards,

(on behalf of the Single Judge to Trial Chamber X)

From: Taylor, Melinda
Sent: 24 February 2021 11:31
To: Trial Chamber X Communications
Cc: Al Hassan Prosecution Team ; V43 Victims Al Hassan Team ; D28 Al Hassan Defence Team ; Associate Legal Officer-Court Officer
Subject: Request for authorisation to conduct cross-examination

Dear Trial Chamber X,

The Defence for Mr. Al Hassan respectfully seeks the authorisation of the Trial Chamber to allow Mr. Alexandre Prezanti to conduct the cross-examination of P-641, by video-link, under the direct supervision of Counsel.

Mr. Prezanti is a legal consultant for the team with over 10 years of experience in ICL, and has been assigned to focus on, inter alia, linkage/modes of liability evidence, and as such to prepare to cross examine certain witnesses, including P-641. He is on the list of ICC legal assistants and has successfully competed bar exams in UK although he does not have an active practising certification since he has practiced internationally rather than completing a UK pupillage.

Unfortunately, due to the COVID quarantine situation/family commitments (he is based in the UK), he is unable to be physically in The Hague.

Given that he is the focal point for issues pertaining to P-641, and to alleviate the workload for Counsel, the Defence respectfully request the authorisation of the Chamber to allow Mr. Prezanti to conduct the cross-examination of this witness, and to do so remotely.

Thank you in advance for your consideration of this request.

Kind regards,

Melinda Taylor, on behalf of the Al Hassan Defence

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