

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
Newport News, Virginia

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Issue Date: 06 December 2022

OALJ NO.: 2021-LDA-00957  
OWCP NO.: LS-02329022

*In the Matter of:*

MEHMET BEGISHOLLI,  
*Claimant,*

v.

KBR GOVERNMENT OPERATIONS/  
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,  
*Employer/Carrier,*

*and*

DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS,  
*Party in Interest.*

**ORDER GRANTING MOTION FOR ISSUANCE OF COMMISSION**

This matter was scheduled for hearing on August 10, 2022. The hearing was canceled after Claimant requested time to analyze changes in the law of North Macedonia with regard to obtaining evidence in that country. It is not now scheduled for hearing.

On November 18, 2022, Claimant filed a motion for the issuance of a commission to Zlato Antevski, Esq., an attorney licensed in North Macedonia, or either Aneta Jovanoska Trajanovska, Esq. or Biljana Mladenovska, Esq., who are also licensed attorneys in North Macedonia, as substitute attorneys for Mr. Antevski. The purpose of the appointment of a commission is to permit the taking of testimony from Claimant Mehmet Begisholli and from Tina Lavaretska, Claimant's treating physician.

Employer/Carrier filed a timely response. Claimant has filed a motion for leave to reply to Employer/Carrier's response; that motion is DENIED.

Claimant moves the undersigned to issue a commission to appoint Zlatko Antevski, Esq. as a commissioner in this matter under Chapter II of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Convention”). Mr. Antevski is a lawyer in the Republic of North Macedonia.<sup>1</sup> The Republic of North Macedonia is a party to the Hague Convention on Evidence with declarations related to Chapter I. See *Status Table for Hague Convention on Evidence*, HAGUE CONF. ON PRIVATE INT’L L., <https://www.hcch.net/en/instruments/conventions/status-table/?cid=82> (last updated June 17, 2021). Claimant, who is a citizen of Kosovo, intends to travel to the Republic of North Macedonia to voluntarily testify in this matter.

The Hague Convention provides a mechanism for a judicial authority in one signatory country to request evidence that is physically located in another signatory country. See *Société Nationale Industrielle Aérospatiale v. U.S.D.C. S.D. Iowa*, 482 U.S. 522, 524, 107 S. Ct. 2542, 2545-46 (1987). This includes the taking of oral testimony in certain circumstances. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, art. 21, Mar. 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444. In civil or commercial matters where the witness is testifying voluntarily, a duly appointed commissioner may take testimony in a foreign, signatory country to aid the legal proceedings in the United States where a competent authority in the country where the testimony will be taken has given its permission, and the commissioner complies with any conditions imposed by the authority in its permission. *Id.* art. 17 “[T]he evidence may be taken in the manner provided by the law applicable to the court in which the action is pending provided that such manner is not forbidden by the law of the State where the evidence is taken.” *Id.* art. 21(d).

In 2020, the Hague Conference on Private International Law – HCCH Permanent Bureau published the Guide to Good Practice on the Use of Video-Link under the Evidence Convention. *1970 Evidence Convention Guide to Good Practice: The Use of Video-Link*, HAGUE CONF. ON PRIVATE INT’L L. (2020) [hereinafter *Guide to Good Practice*], <https://assets.hcch.net/docs/569cfb46-9bb2-45e0-b240-ec02645ac20d.pdf>. As the *Guide to Good Practice* makes clear, parties may take the testimony of a witness at hearing by a video link such as Microsoft Teams by utilizing the appointment of a commissioner under Article 17. See, e.g., *Guide to Good Practice* ¶ 102. Provided it does not violate any laws of the country where the witness is located and the evidence will be taken, the attorneys may question the witness pursuant to the ordinary manner utilized in hearings at the Office of Administrative Law Judges.<sup>2</sup> Hague

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<sup>1</sup> Claimant’s proposed substitutes for Mr. Antevski in the event he is unavailable are Aneta Jovanoska Trajanovska or Biljana Mladenovska, both of whom are lawyers in the Republic of North Macedonia.

<sup>2</sup> Rule 28 of the Federal Rules of Civil Procedure, which addresses the use of a commission for the taking of a deposition in a foreign country, would not otherwise preclude the use of a commission or the Hague Convention on Evidence for purposes of taking hearing testimony at the Office of Administrative Law Judges. See Fed. R. Civ. P. 28(b)(1); 29 C.F.R. § 18.10(a).

Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, art. 21(d), Mar. 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444; *Guide to Good Practice* ¶¶ 102, 105, 108, 116-118. “Unlike Chapter 1 [letters of request], the active participation of the parties, their representatives and/or judicial personnel is subject to the law of Origin, provided it is not incompatible with the law of the State of Execution, and subject to any conditions specified by the State of Execution when granting permission.” *Guide to Good Practice* ¶ 107.

The Hague Convention allows Claimant to travel to North Macedonia and testify by video in this matter pursuant to Chapter II upon the issuance of a commission that is approved by an appropriate official in the Republic of North Macedonia. Upon approval, the testimony may be taken pursuant to the Rules of Practice and Procedure and the general laws of the United States, subject to any conditions imposed by the Republic of North Macedonia in approving the commission.

The commissioner has the power to administer the oath, provided doing so does not violate the law of the country where the evidence is taken. Hague Convention, Art. 21(d), Mar. 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444; *Guide to Good Practice* ¶ 123. Thus, a duly appointed commissioner located in the Republic of North Macedonia in this matter may administer the oath to the witness provided doing so does not violate the law of the Republic of North Macedonia. In addition, the commissioner bears the responsibility of identifying the witness in accordance with the law of the United States, if he or she can do so without violating the laws of the Republic of North Macedonia. *Guide to Good Practice* ¶ 126.

The *Guide to Good Practice* notes that the term “civil or commercial matters” should be interpreted liberally and in an autonomous manner. *Guide to Good Practice*, at 27. This is consistent with the guidance contained in the *Conclusions and Recommendation of the Special Commission on the Practical Operation of the Hague Apostille, Service, Taking of Evidence and Access to Justice Conventions*, HAGUE CONF. ON PRIVATE INT’L L. ¶¶ 13-14 (Feb. 2009) [hereinafter 2009 *Recommendations of the Special Commission*], <https://assets.hcch.net/docs/5bf65314-4f55-42b5-9b0c-770f2bfccd37.pdf>. The phrase is not interpreted exclusively with reference to either the laws of the United States or the laws of the country where the evidence is to be taken. *Id.* According to the 2009 Recommendations of the Special Commission:

The SC takes the view that a liberal interpretation should be given to the phrase “civil or commercial matters”. In doing so, one should focus on the nature of the cause of action and keep in mind that the Convention does not expressly exclude any particular subject matter from the scope of “civil or commercial matters”. The SC invites States Parties to encourage their Central Authority to communicate with the forwarding authority when

problems of interpretation arise. It recommends that States Parties encourage forwarding authorities to include in their requests for service some information about the nature of the cause of action, in particular where a request may give rise to doubts as to whether it falls within the scope of the Convention.

*Id.* ¶ 4. The Special Commission reiterated this approach in May 2014. See *Conclusions and Recommendations of the Special Commission on the practical operation of the Hague Service, Evidence and Access to Judge Conventions*, HAGUE CONF. ON PRIVATE INT'L L. ¶¶ 40-41 (May 2014), <https://assets.hcch.net/docs/eb709b9a-5692-4cc8-a660-e406bc6075c2.pdf>.

The undersigned finds that an adversarial action between private parties for compensation and medical benefits under the Longshore Act, as extended by the Defense Base Act, falls under a liberal reading of the term civil or commercial matters within the meaning of the Hague Convention on Evidence. The commission signed by the undersigned sets forth a description of the nature of this Defense Base Act legal action so that the Republic of North Macedonia can also make its own determination whether the action falls within the scope of the Hague Convention on Evidence. The undersigned also finds that the fact that this case is being adjudicated by an administrative law judge and the Office of Administrative Law Judges rather than an Article III court as part of the Judicial Branch of the United States Government does not preclude the undersigned from issuing a commission under the Hague Convention of Evidence, although the Republic of North Macedonia could certainly choose not to accept it.

### **ORDER**

Based on the foregoing, IT IS ORDERED:

1. Claimant's motion for issuance of a commission is GRANTED;
2. The undersigned will sign and issue the commission submitted by counsel for Claimant in this matter so that it may be submitted to the appropriate official in the Republic of North Macedonia; and

3. Counsel for Claimant shall advise the undersigned immediately upon the acceptance or rejection of this commission by the appropriate official in the Republic of North Macedonia, so that appropriate next steps may occur.

**SO ORDERED.**

PCJ/pmp  
Newport News, Virginia

PAUL C. JOHNSON, JR.  
District Chief Administrative Law Judge

## SERVICE SHEET

Case Name: **Begisholli\_v\_KBR\_Government\_Opera\_**

Case Number: **2021LDA00957**

Document Title: **ORDER GRANTING MOTION FOR ISSUANCE OF COMMISSION**

I hereby certify that a copy of the above-referenced document was sent to the following this 6th day of December, 2022:

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